TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 208.

THEOPHILUS KING, ADVERSE CLAIMANT, AND THE LIPPITT WOOLEN COMPANY, ALLEGED TRUSTEE, PLAINTIFFS IN ERROR,

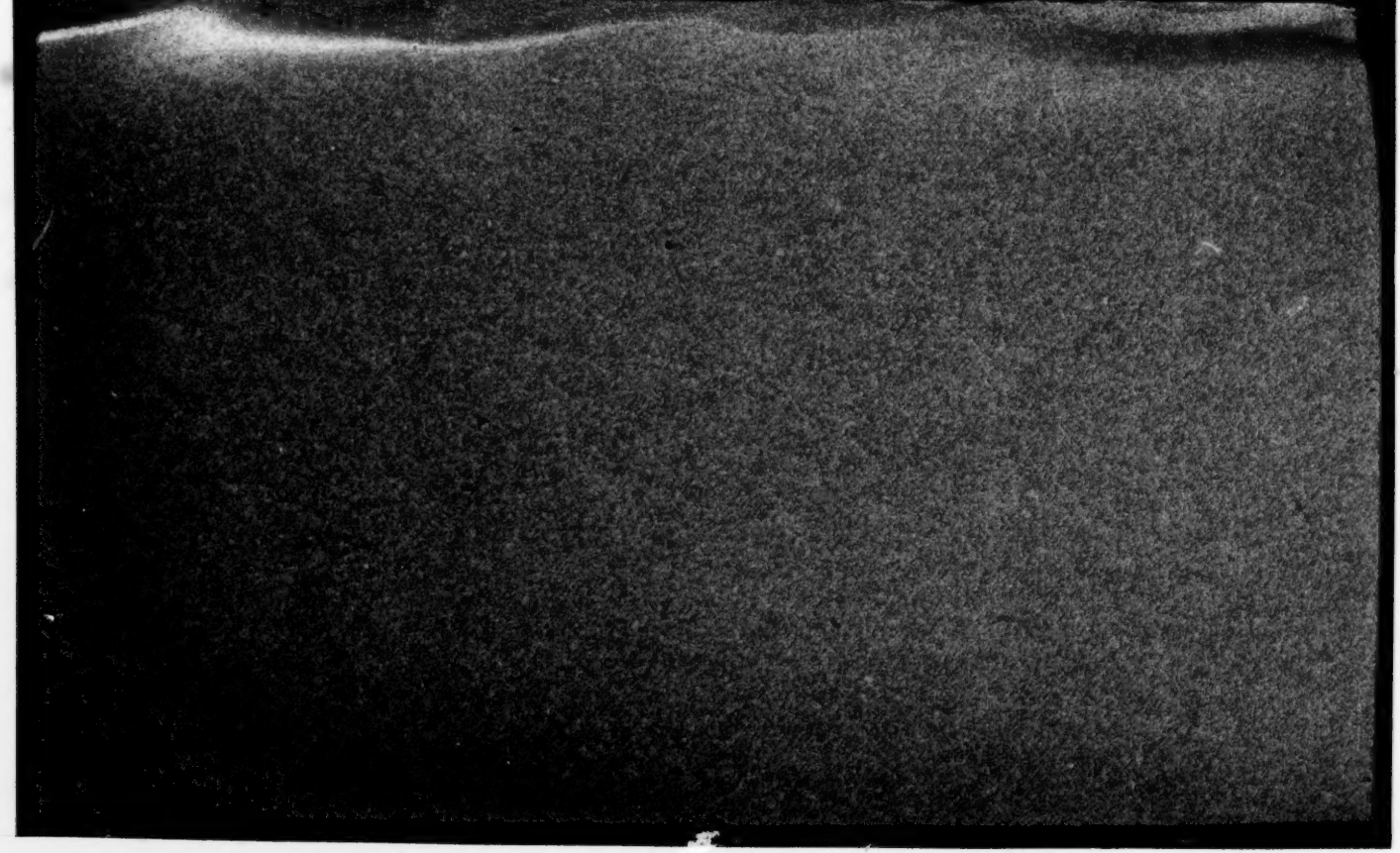
vs.

JOHN A. CROSS, GIDEON P. BROWN, EDWARD STREET, AND AMASA CLARKE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

FILED OCTOBER 25, 1894.

(16,703.)



(16,703.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 186.

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vs.

JOHN A. CROSS, GIDEON P. BROWN, EDWARD STEESE, AND AMASA CLARKE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

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a Certified copy of record and proceedings and certain documents and exhibits designated by the attorneys of Lippitt Woolen Company and Theophilus King in the case of John A. Cross *vs.* Brown, Steese & Clarke, No. 4867, common pleas division of the supreme court, county of Providence, State of Rhode Island and Providence Plantations, September session, A. D. 1895.

1 (*Copy Affidavit of Lippitt Woolen Company, Garnishee.*)

(Filed December 6, 1889.)

PROVIDENCE, *sc:*

Court of Common Pleas, Dec. Term, 1889.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK.

I, Charles H. Merriman, treasurer of the Lippitt Woolen Company, upon whom garnishee process was served in the above-entitled cause, on oath depose and say that at the time of the service of the original writ in said cause, as appears by the return of the officer thereon, there was in the hands and possession of the said Lippitt Woolen Company as the trustee of said defendants the sum of $11,938.39 and also 357 wool sacks, and except as aforesaid that there was no personal estate of any name or nature in the hands and possession of said Lippitt Woolen Company as the trustee of said defendants.

(S'g'd) CHAS. H. MERRIMAN.

Subscribed and sworn to at Providence, in the county of Providence, this 5th day of December, A. D. 1889, before me—

(S'g'd) JOHN D. THURSTON,
Justice of the Peace.

2 (*Copy of Additional Affidavit of Lippitt Woolen Company, Garnishee, Allowed to be Filed by Order of Court—Roger, J.—June* 13, 1893.)

(EXHIBIT.)

[L. S.] COMMONWEALTH OF MASSACHUSETTS:

I, Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk, and hath the keeping of the files, records, and proceedings of said court within and for said county; also of the late court of common pleas within and for said county, and of the late superior court of the county of Suffolk aforesaid; that he is by law the proper person to make out and to certify copies of the files, records, and proceedings of said

several courts; that full faith and credit are and ought to be given to his acts and attestations done, as aforesaid, and that his attestation to the papers hereunto annexed, being numbered 1 to 55, inclusive, of the files, records, and proceedings of the said superior court, is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this sixth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

(S'g'd) ALBERT MASON,
Chief Justice of the Superior Court.

3 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for the said county of Suffolk it is thus contained, the following being the entire record in the case:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

[SEAL.] To the sheriffs of our several counties or to their deputies, Greeting:

We command you to attach the goods or estate of the Lippitt Woolen Co., a corporation organized under the laws of the State of Rhode Island & having a usual place of business in Providence, in said State, to the value of fifteen thousand dollars, and summon the said defendant (if it may be found in your precinct) to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Monday of May next, then and there in our said court to answer unto William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of said Providence, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Brown, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk—

In an action of contract.

4 And the plaintiffs say that they are assignees in insolvency of the estates of Gideon P. Brown, of Boston, in said county; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings within and for said county of Norfolk, and that the defendant owes the plaintiffs the sum of eleven thousand nine hundred and thirty-eight and $\frac{39}{100}$ —($11,938.39) for goods sold to the defendant by said insolvents, an account whereof is hereto annexed, with interest thereon from the first day of November, 1889.

By their attorney, CHARLES THORNTON DAVIS.

5 *Account Annexed.*

The Lippitt Woolen Co. to Wm. R. Dupee, Sam'l P. Colt, and Weston Lewis, assignees, Dr.

1889.			
July 12.	To 3 bales No. 2 Oregon fleece wool.....		$269.23
	" carting.....		.54
	July 12, 60 days,		
Aug. 6.	" 45 bales No. 2 Oregon fleece wool.....		4,214.21
	" carting		8.10
	Sept. 1, 60 days,		
" "	" 101 bags Territory fleece wool.....		7,269.40
	" carting		8.08
	Aug. 1, 60 days,		
" "	" 3 bags Territory fleece wool.....		179.17
	" carting		.38
			$11,949.11
" "	By credit allowance.....		10.72
			$11,938.39

6 To the damage of the said plaintiffs (as they say) the sum of fifteen thousand dollars, which shall then and there be made to appear with other due damages; and whereas the said plaintiffs say that the said defendant has not in its own hands and possession goods and estate to the value of fifteen thousand dollars aforesaid which can be come at to be attached, but has intrusted to and deposited in the hands and possession of Hiram Leonard, doing business and having a usual place of business in said Boston under the name of H. Leonard & Co., trustee of the said defendant, goods, effects, and credits to the said value. we command you, therefore, that you summon the said supposed trustee (if he may be found in your precinct) to appear before our justices of our said court, to be holden as aforesaid, to show cause, if any he has, why execution to be issued upon such judgment as the said plaintiff may recover against the said defendant in this action (if any) should not issue against its goods, effects, or credits in the hands and possession of the said trustee.

And have you there this writ with your doings therein.

Witness Albert Mason, Esquire, at Boston, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOS. A. WILLARD, *Clerk.*

7 On which said writ are the following returns by the officer who served the same :

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

By virtue hereof I this day, at 10 minutes past one o'clock p. m., summoned the within-named trustee, Hiram Leonard, to appear and show cause at court, as within directed, by delivering to him in hand an attested copy of this writ.

FRED H. SEAVEY,
Deputy Sheriff.

Service & tr.....	.33
Copy.....	1.00
	1.58

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

The within-named defendant, The Lippitt Woolen Co., not being incorporated under the laws of this Commonwealth and having no place of business, office, agent, or attorney therein known to me as such and duly accredited within my precinct, I could make no service upon it.

FRED H. SEAVEY,
Deputy Sheriff.

On said first Monday of May, A. D. 1891, the plaintiffs appeared, by Charles Thornton Davis, Esquire, their attorney, and entered the above action, and no answer having been filed therein by the said Hiram Leonard, trustee, at the expiration of ten days from said first Monday, as required by law, a default was thereupon entered against him on the fifteenth day of said May.

And on the sixteenth day of said May the following order was entered by the court, to wit:

8 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court, April Sitting, A. D. 1891.

William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of Providence, in the State of Rhode Island, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Browne, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, pl'ffs, *vs.* The Lippitt Woolen Co., a corporation organized under the laws of said State of Rhode Island and having a usual place of business in Providence, in said State, def't, and Hiram Leonard, doing business and having a usual place of business in said Boston, under the name of Leonard & Co., supposed trustee.

This is an action of contract to recover fifteen thousand dollars alleged to be due to the plaintiffs from the defendant corporation on

the twentieth day of April, 1891, as set forth in the plaintiffs' writ of that date.

And it appearing to the court by the suggestion of the plaintiffs and on inspection of the officer's return on the plaintiffs' writ that the defendant corporation is not of this Commonwealth nor now resident therein at the time of the service of said writ, and that it has no tenant, agent, or attorney in this Commonwealth known to the plaintiffs or to said officer, and that no personal service of said writ has been made upon the defendant corporation—

It is ordered by the court here that the plaintiffs give notice to the defendant corporation of the pendency of this action by serving it with a true and attested copy of this order fourteen days
9 at least before the first Monday of June, 1891, that it may then and there appear and show cause why judgment in the above-entitled action should not be rendered against it, and that this action be continued to the next sitting of the court, and so from sitting to sitting until notice shall have been given to the defendant corporation agreeably to this order.

DANIEL W. BULLARD, *Ass't Clerk.*

(Endorsed:) No. —. Chas. T. Davis. Dupee & *al. v.* Lippitt Woolen Co. Personal order of notice. Suffolk clerk's office. Filed Jun- 18, 1891. Jos. A. Willard, cl'k superior court.

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Subscribed and sworn to in the city of Providence the 16th day of May, A. D. 1891, before me—

[SEAL.] FRANK HEALY,
Notary Public.

Fees, 2.80.

10 And afterwards, during said sitting, to wit, on the fifth day of June, in said year, the following appearance in writing was entered, to wit:

SUFFOLK, *ss:*

Superior Court, April Sitting, 1891.

WILLIAM R. DUPEE ET AL., Pl'ff-,
v.
LIPPITT WOOLEN CO. & TR., Def't.

In the above action I appear for defendant.

H. L. BOUTWELL,
209 *Washington St., Boston.*

Also on said last-named day the following was filed:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court.

WILLIAM R. DUPEE ET ALS. *vs.* THE LIPPITT WOOLEN CO. & TR.

Defendant's Answer.

And now comes the defendant in the above-entitled cause and answering says that it admits the correctness of the account annexed in the plaintiffs' declaration, and that it admits indebtedness to said Brown, Steese & Clark to the amount of $11,938.39, as therein set forth.

And this defendant, further answering, says that on the 13th day of August, 1889, at 2.18 o'clock in the afternoon, at Providence, in the State of Rhode Island, being indebted, as aforesaid, it was served with garnishee process issuing out of the court of common pleas within and for the county of Providence and said State of Rhode Island in an action of contract, wherein one John A. Cross, of said Providence, is plaintiff and said Brown, Steese & Clarke are
11 defendants, which action is still pending in said court, and in said action this defendant, on the 6th day of December, 1889, filed its answer as garnishee, admitting and setting forth its said indebtedness to said Brown, Steese & Clarke of $11,938.39, and on the 20th day of March, 1890, a verdict in said suit of Cross *vs.* Brown, Steese & Clarke & Trustees was rendered for the plaintiff in the sum of $41,534.27, and subsequently a motion in arrest of judgment and interrogatories to garnishees other than this defendant were filed and said action continued *nisi* without this defendant having as yet been charged as garnishee therein or motion therefor made or judgment therefor rendered, all of which appears by the records of said court.

And this defendant is informed and believes, and therefore avers, that prior to the date of service upon it od said process in said suit of Cross *vs.* Brown, Steese and Clarke & Trustees, to wit, on August 12, 1889, this defendant being indebted as aforesaid, Edward Steese and Amasa Clarke, members of said firm of Brown, Steese and Clarke, filed a petition in the court of insolvency within and for the county of Norfolk, in this Commonwealth, praying that firm of Brown, Steese and Clarke might be declared insolvent, publication of the notice of the fil*l*ing of which petition was made on the early morning of August 23, 1889, and that on the 21st day of said August a warrant in insolvency issued from said court against the joint and several estate of said Brown, Steese and Clarke, and that on the 4th day of September, 1889, the plaintiffs were duly elected and appointed assignees in insolvency, and that the judge of said court of insolvency, by an instrument under his hand, purported to assign and convey to the plaintiffs as assignees, as

aforesaid, all the estate, real and personal, of said debtors,
12 except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto; all of which appears by the records of said court of insolvency; that said firm was composed of Gideon P. Brown, Edward Steese, and Amasa Clarke, all of whom were citizens of said Commonwealth of Massachusetts, and which firm was located and carried on business in Boston, in said Commonwealth, and had no place of business whatever elsewhere. But this defendant is advised that on the foregoing facts and by virtue of the laws of said State of Rhode Island and his attachment thereunder the said Cross has a lien on said debt of this defendant to said Brown, Steese and Clarke; and this defendant is further advised, and therefore avers, that on the foregoing facts the said assignment made by the judge of the said court of insolvency, as aforesaid, could not and therefore did not transfer to and vest in the plaintiffs, as assignees, as aforesaid, the said debt of this defendant, this defendant being a citizen and resident of said State of Rhode Island.

And this defendant, further answering, says that it owes said amount, as aforesaid, and is ready and willing to pay the same to whomsoever it lawfully may on order of court, provided and whenever it may do so without the liability of being twice compelled to pay the same debt, and further says not.

LIPPITT WOOLEN CO.,
[SEAL.] By CHAS. H. MERRIMAN, *Treasurer.*

And on the eighth day of said June the following was filed:

SUFFOLK, *ss:*

Superior Court, June 5, 1891.

WILLIAM R. DUPEE & ALS., Assignees,
vs.
LIPPITT WOOLEN COMPANY.

Plaintiffs' Demurrer.

And now come the plaintiffs in the above-entitled action
13 and demur to the defendant's answer filed therein, specially assigning as cause for demurrer that the answer does not disclose a legal defence.

By their attorney, CHARLES THORNTON DAVIS.

And on the eighteenth day of said June said order of notice was returned into court with the following thereon:

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Subscribed and sworn to, in the city of Providence, the 16th day of May, A. D. 1891, before me—

[SEAL.] FRANK HEALY,
Notary Public.

Fees, 2.80.

Thence the same was continued to the July sitting, 1891, and at a hearing, on the seventh day of July last aforesaid, it was ordered by the court that said demurrer be overruled. Thereupon, on the fourteenth day of said July, the plaintiffs filed the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss.*:

Superior Court.

WM. R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Plaintiffs' Motion for Rehearing and Argument on the Question of the Plaintiffs' Demurrer to the Defendant's Answer.

And now come the plaintiffs and say that at the hearing
13½ on the demurrer of the plaintiffs to the defendant's answer in the above-entitled cause counsel retained by the plaintiff-, and who was expected to take part in said argument, was absent through failure to get notice seasonably of the time set for said hearing, and that there were considerations which said counsel desired to submit and of which the counsel who argued the case were not sufficiently informed and which the plaintiffs' counsel believe are of controlling weight in said case, and that the plaintiffs have reasonable cause for fear that they would be deprived of the benefit to which they should be entitled on a judgment in their favor if such judgment should be delayed for the determination of said question by the supreme court.

Wherefore the plaintiffs move this honorable court for a rehearing and argument on the question of the plaintiffs' demurrer to the defendant's answer, and that the decision overruling said demurrer may be reversed, and that judgment for the plaintiff- may be entered in said action.

CHARLES THORNTON DAVIS,
Attorney for Pl'ff-.

And afterwards, during said sitting, to wit, on the eighth day of August, in said year, after a hearing it was ordered by the court that said motion for rehearing on question of demurrer be overruled.

Thence the same was continued to the October sitting, 1891, and thence to the present January sitting, 1892.

And now, on the first day of March, 1892, the plaintiffs file the following, to wit:

SUFFOLK, *ss*:

Superior Court, Feb. 23rd, 1892.

14 WILLIAM R. DUPEE ET ALS.
vs.
LIPPITT WOOLEN CO.

Motion to Amend.

And now come the plaintiffs in the above-entitled action and move for leave to amend their writ and declaration therein by naming as party plaintiff, in the place of these present plaintiffs, Theophilus King, of Quincy, in the county of Norfolk, and by setting in said writ the following:

"The said King having purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees of the joint and several estates of Gideon P. Brown, Edward Steese, and Amasa Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and said assignees having, under the direction and order of the court of insolvency, sold to said King all claim of said insolvents against said Lippitt Woolen Co."

And by further amending the declaration by inserting in place of the first six lines thereof the following:

"And the plaintiff says that he has purchased from William R. Dupee, Weston Lewis, and Smauel P. Colt, assignees in insolvency of the joint and several estates of Gideon P. Brown, of Boston, in the county of Suffolk; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and that said assignees, under the order and direction of said court of insolvency, have sold to him all right, title, and interest of the said Dupee, Lewis, and Colt, as assignees, as
15 aforesaid, in and to all accounts payable shown by the books of the firm of Brown, Steese and Clarke as due said firm and in and to all claims or choses in action, including the claim herein sued on, which the said insolvents had or which the said Dupee, Lewis, or Colt had, as assignees, as aforesaid, against the defendant, and that the defendant owes the plaintiff the."

By their attorney, CHARLES THORNTON DAVIS.

Which said amendment was allowed; and on the tenth day of said March the defendants file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Plaintiff,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Answer to Amended Declaration.

And now comes the defendant in the above-entitled action, and for answer to the amended declaration therein filed repeats its former answer filed herein, referring to and making the same a part hereof.

By its attorney, H. L. BOUTWELL.

Also on said last-named day the plaintiffs file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Plaintiff's Replication.

16 And now comes Theophilus King, plaintiff in the above-entitled action, and admits and says that the matters of facts set forth in the defendant's answer are true, but denies the conclusions of law on the effect thereof therein alleged on advice.

The plaintiff further says that the indebtedness of said defendant to said Brown, Steese & Clarke was contracted on a sale or sales of wool made by said firm to the defendant at the place of business of said firm, in Boston, Massachusetts, and all of said wool was there delivered to the defendant, and payment therefor was to be made at the office of said firm, in said city of Boston.

Copies of the alleged notes sued on by said Cross in Rhode Island in the action wherein the defendant was summoned as alleged trustee are hereby annexed, marked A and B, and made a part hereof, whereby it appears and the plaintiff says that said alleged notes were made to and were payable only at the banking-house of the International Trust Company, in said Boston, which trust Co. is a corporation established under the laws of said Commonwealth and has its principal and only place of business in said Boston, and that payment of said alleged notes was secured by the pledge to said International Trust Co. of the collateral recited in each.

The plaintiff further says that said International Trust Co. held both of said alleged notes and all said collateral more than sixty

days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about Sept. 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for
17 many months; that on or about Sept. 7th, 1889, the probable embar-assment of said firm had been publicly rumored and published in said Boston and brought to the notice of said trust Co., after which and on or about the same date said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

That said International Trust Co. at the time of said alleged transfer to said Cross held many and other obligations of said firm of Brown, Steese & Clarke in the form of instruments of the same tenor as said alleged notes, except as to dates, amounts, periods of maturity, and the recitals of collateral, but payment whereof was secured by pledges held with like alleged powers for the application of the proceeds thereof, as is set forth in said alleged notes.

Of all of which facts, equities, and duties arising therefrom as they then existed or might arise said Cross knew, or, the plaintiff says on information and belief, had sufficient notice to put him on such enquiry as would have discovered the same; that said International Trust Co. has realized large sums, proceeds of said collateral to said other obligations, and from the collateral pledged with and for the payment of said alleged notes sued on by said Cross said International Trust Co. has already received over twenty-eight thousand dollars.

That said International Trust Co. has made proof of certain of its said obligations of said firm of Brown, Steese & Clarke or alleged balances thereof to the amount of many thousands of dollars in said insolvency proceedings of said firm, and has received full dividends of said estate thereon, and that said Steese and said Clarke
18 have received their full discharges in said proceedings from all claims provable against them or said firm in the premises.

The plaintiff further says that by the laws of the State of Rhode Island in relation to insolvent debtors (Public Statutes R. I., chap. 237, sec. 12), herein referred to and made a part hereof, it is provided that:

"Whenever the property of any debtor shall be attached or levied upon by any creditor, the debtor may at any time before such property shall be sold and the proceeds thereof applied to the payment of the claim or judgment upon which such attachment or levy shall have been made, and within sixty days after such attachment or levy, dis-olve such attachment or levy by making and having recorded in the records of the town or city where the assignor resides or where any of the real estate of such debtor is located, an assignment of all the property and estate of such debtor, except so much thereof other than debts secured by bills of exchange or negotiable promissory notes as is or shall be exempt from attachment by stat-

utes of the State and of the United States, to some citizen of the State of Rhode Island, for the equal benefit of all his creditors in proportion to their respective claims, except as is provided in sec. 14 of said chap. 237 and such assignment shall be effectual to convey all the property and estate of such debtor, except as aforesaid.

That section 14 of said chapter, also referred to and made a part hereof, is as follows:

"No assignment hereafter made for the benefit of creditors shall give to any one creditor any preference over the claims of any other creditor, except the creditor be the United States or the State of Rhode Island, or for the wages of labor performed within six
19 months previous to such assignment, not exceeding one hundred dollars to any one person: Provided however, that the expenses of executing the assignment shall first be paid out of the estate."

And the plaintiff says that also in other respects and particulars it appears in the laws and practice of said State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal *pro rata* distribution of the estate of insolvents to and among their creditors, and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

And the plaintiff further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the plaintiff, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such, and being insolvent, were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts, and could not make valid voluntary assignments in violation thereof nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island; nor could they secure an assignment of their assets solely to a citizen or citizens of Rhode Island, but the same were assigned in said proceedings to one citizen of said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty
20 days from the date of the service of said trustee process on said Lippitt Woolen Co. in the case of said Cross aforesaid.

And the plaintiff, referring to said insolvency proceedings, and annexing a copy of the petition of the debtors and of the adjudication thereon, and the warrant issued thereon, and of the assignment of the assets of said insolvents to the assignees therein hereto, and making all the same a part hereof, claim- that all attachments in said suit of said Cross aforesaid were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne process

upon and to effect an equal *pro rata* distribution of their assets by assignments to citizens of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, the plaintiff claims pertains also to the citizens of the several States under the Constitution of the United States aforesaid.

The plaintiff further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in said suit of said Cross; nor was any appearance for them or any of them entered in said suit until after the assignment of their assets in said insolvency proceedings aforesaid.

And the plaintiff, relying upon said insolvent laws and said proceedings in insolvency in said court of insolvency as a court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide- "that full faith and credit shall be given in each State to the public acts,
21 records and judicial proceedings in every other State," and that said State of Rhode Island and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in said State in said assignees free from said alleged attachments in said suit of said Cross.

The plaintiff also pleads and relies upon article 6 of the Constitution of the United States as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

And the plaintiff further says that by a certain contract or agreement made under the order and direction of the court of insolvency within and for the county of Norfolk the plaintiff purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim allowed by said court of insolvency in said proceedings against said insolvent estates; whereby the plaintiff acquired active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in these or any other proceedings in this Commonwealth or by virtue of the laws thereof, or elsewhere.

And the plaintiff further says that the laws of said State of Rhode Island provide (Acts of 1884, chap. 433) that—
22 "Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate, under an assignment or otherwise, may on his own motion become a party to the action so far as respects the title in said personal estate.

The answer sworn to by a trustee shall be considered true in de-

ciding how far said trustee is chargeable, but either party to the suit, or any claimant to the estate so attached, may allege and prove any facts not stated or denied by said trustee that may be material in so deciding."

And that by virtue thereof he has filed a motion in said suit brought by said Cross in Rhode Island praying that he may become a party to said action so far as respects the title to the personal estate of said Brown, Steese & Clark in the hands of said Lippitt Woolen Company, alleged trustee by attachment on trustee process therein, and may recover and receive the same should said alleged trustee not be discharged in said process, and may be heard as to the charging of said trustee; in which motion and amendments which he offers thereto he has set forth all the facts which appear in the pleadings herein, including this replication, and has given said Lippitt Woolen Co. full notice thereof, and has further set up in said motion and petition that said Cross did not begin and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in said State of Rhode Island, but colorable only, for the benefit of said International Trust Co. of Boston aforesaid.

Wherefore, for all and singular the premises and the pleadings herein, the plaintiff claims that the defendant is not chargeable as trustee in said suit by said Cross in Rhode Island if it, as in duty bound, discloses the facts of this suit and the pleadings herein set forth.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.

23 A.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *April 9th*, 1889.

On demand after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the rate of 5½ per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Business paper as follows:

H. H. Hollis, 10,000; Phœnix Woolen Co., 7,036.63.

C. A. Phelbuck, 2,500; Mackintosh, 5,000.

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's

board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

24 Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th, 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court, and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[SEAL.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

25 (Endorsed:) Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. Court of common pleas, county of Providence, State of Rhode Island.

B.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *May 7th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of busi-

ness, in Boston, twenty thousand dollars, with interest at the rate of 5 per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Note Atlantic, May 7, 4 mos., 10,000; endorsed, Owen Bros.
" " April 11, 5 mos., 10,000; " "

The market value of which is now $—, with the right to call for additional security should the same decline, and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any
26 substitutes therefor, or any additions thereto at any broker's board, or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th, 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

27 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc.:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[SEAL.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

(Endorsed:) Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. Court of common pleas, county of Providence, State of Rhode Island.

And also on said last-named day the parties file the following, to wit:

28 To the honorable the judge of the court of insolvency in and for the county of Suffolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown, of Boston, in the county of Suffolk, constitute the firm of Brown, Steese & Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars, each contracted, *while* such judgments *which* they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts, according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

29 NORFOLK, *ss:*

AUG. 10, A. D. 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it ap-

pearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

30 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current, at ten o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof, this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

31 SUFFOLK:

BOSTON, *August 14th*, 1889.

I this day served the within petition and order thereon on the within-named Gideon P. Brown, by leaving an attested copy thereof at his last and usual place of abode, for his appearance at court as within directed.

FRED H. SEAVEY,
Deputy Sheriff.

Sum's	.50
Copy	1.50
Travel to serve	.40
" " return	.80
	$3.20

(Endorsed:) Case No. —. Debtors' petition and citation, in the case of Brown, Steese & Clarke, insolvent debtors. Filed August 12, 1889. Warrant ret'ble —— —, 18—. Aug. 12 cit. issued, ret. Aug. 21, 1889. From the office of M. F. Dickinson, Jr., Equitable building, Boston, Mass. True copy. Attest: John D. Cobb, assist. register.

32 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] To the sheriff of said county of Suffolk or either of his deputies, Greeting:

You are hereby directed forthwith, as messenger, to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Nor-

folk, and Gideon P. Brown, of Boston, in the county of Suffolk, co-partners, doing business in said Boston under the firm name of Brown, Steese and Clark, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice inside in the newspaper called the Boston Daily Advertiser, printed in Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice, by mail or otherwise, within five days after the date hereof, to said debtors and to all the creditors upon the schedule of their creditors to be furnished you by them within three days after the date hereof, which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in
33 said county of Norfolk, on the first Wednesday of September next, at ten o'clock in the forenoon.

And have you there this warrant with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

34 (No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge; and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889; and all of said notices were according to the directions set out in said warrant.

Fees.

1. Service of warrant	$2.00
2. Necessary travel (at the rate of four cents a mile)	9.60
3. Notice to creditors (at 10 cents each)	15.50
4. Actual expenses in publishing notices as follows:	
Paid Daily Advertiser	3.00
Postage	3.00
5. Actual expenses in custody of property and in other services as follows:	
Cash paid keepers, 14 days	42.00
Custody of property, 14 days	14.00
	$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

35 NORFOLK, *ss:*

SEPTEMBER 4, 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. Warrant in the case of Brown, Steese & Clark, insolvent debtors. Date, August 21, 1889. Returnable 1st Wed. Sept., 1889. First publ'n, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

36 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese and Clarke, copartners, insolvent debtors.

Know all men by these presents: that whereas, William R. Dupee of Newton in said Massachusetts, Samuel P. Colt of Providence in the State of Rhode Island and Weston Lewis of Boston in said Massachusetts have been duly appointed assignees in said case.

Now, therefore, I, George White, Esquire, judge of the said court of insolvency, in and for said county of Norfolk by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the Laws of said Commonwealth do hereby convey and assign to the said assignees all the joint and separate estate, real and personal of the said Gideon P. Brown, Edward Steese and Amasa Clarke, copartnership insolvent debtors,

including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine excepting such as may be by law exempted from attachment, with all their joint & separate deeds, books and papers relating thereto.

To have and to hold all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt and Weston Lewis assignees as aforesaid and their heirs, forever; in trust, nevertheless, for the uses and purposes, with the power and subject to the conditions and limitations set forth in the chapter and laws aforesaid.

37 In witness whereof, I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed, on this fourth day of September in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

(Endorsed:) Case No. 737. Assignment in the case of Brown, Steese & Clark, insolvent debtors. Recorded, vol. 4, page 84. True copy of record. Attest: John D. Cobb, assist. register.

38 COMMONWEALTH OF MASSACHUSETTS, } *ss.:*
Suffolk, }

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff, }
vs.
THE LIPPITT WOOLEN CO., D'f't. }

Agreed Statement of Facts.

In the above action it is agreed, upon information and belief and for the purposes of this suit, that the facts as stated and not denied in the pleadings herein are true, except that conclusions and inferences of law or effects thereof as stated on advice are not admitted.

It is further agreed that the statutes of said State of Rhode Island with regard to trustee process are as follows:

Public Statutes of Rhode Island.

CHAP. 207, SEC. 22. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands of any person, copartnership or corporation as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and the time of day of such service, with the person or some member of the copartnership named in such writ as trustee, or if such trustee or the corporation whose shares shall be directed to be attached shall be a bank, with the cashier thereof, if an insurance company, with the president or

secretary thereof, and if any other corporation, it shall be served by leaving an attested copy thereof at the manufactory where the person is employed whose wages are to be trusteed or at the usual place where the payment of said wages is made, upon the treasurer thereof or the person executing the duties of treasurer thereof or the agent or superintendent thereof, or at the office of such corporation
39 with some person there employed, and such officer shall also leave an attested copy of such writ so endorsed with the defendant or at his last and usual place of abode, or if he have none within the precinct of such officer, the latter shall send such copy to the defendant by mail, if his address is known to or can be ascertained by such officer.

CHAP. 212, SEC. 5. In case any action commenced by attachment of real estate or by foreign attachment shall not be answered and the defendant shall not return into this State before the return of the writ, the court shall continue the action one term, and the defendant shall have a right to answer the same six days previous to the term to which such action shall be continued, or may be permitted to answer the same on the first or second day of said term in like manner as is provided in *in* the preceding section.

SEC. 4. The defendant in a civil action appealed from the judgment of a justice court may file any plea or answer therein other than a plea of abatement on or before the second day of the term of the court at which such appeal is entered.

CHAP. 208, SEC. 1. In all attachments of real estate, or of goods and chattels, or of personal estate in the hands of a trustee, or of stock or shares in any banking association or other incorporated company, he who shall first procure any such attachment to be made for any just debt or damages shall be entitled to have his debt or damages satisfied before any other demand for which the same shall be attached or taken by execution at the suit of any other person, and all others in order of attachment.

SEC. 9. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares, if a bank, the cashier thereof, if an insurance com-
40 pany, the president or secretary thereof, and if any other corporation, the treasurer thereof or person executing the duties of treasurer, shall render an account upon oath to the court to which such writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving such writ.

SEC. 10. The person, member of the copartnership or officer of the corporation with whom a copy of a writ shall have been left for the purpose of attaching the person- estate of the defendant in the hands or possession of such person, copartnership or corporation, as trustee, shall render an account, in writing, upon oath to the court to which such writ is returnable, of what estate such person, copartnership or corporation had in his hands or possession at the time such writ was serve- if any, or if he had none either directly or indirectly, shall return such fact in writing under oath, to such court.

SEC. 11. The disclosure made by virtue of either of the two preceding sections shall be sworn to before any person authorized to

administer oaths and shall be filed with the clerk of the court, if there be a clerk, otherwise with the court to which such writ shall be returnable.

SEC. 12. Either party may examine the person so making oath, upon written interrogatories, to be filed with such clerk, or court, if there be no clerk, and such person, after having been furnished with a copy of such interrogatories, shall answer the same responsively in writing under oath administered as aforesaid, and shall return the answer to such clerk, or to such court, if there be no clerk, at such time as such court shall by general rule or by special order in such case direct.

41 SEC. 13. If it shall appear by the disclosure of the person making such oath that the person, copartnership or corporation served with a copy of such writ had at the time of service thereof any of the personal estate of the defendant in his or their hands, then and in such case the plaintiff, after having recovered judgment against such defendant, may bring his action against such person, copartnership or corporation to recover so much as will satisfy such judgment, with interest and costs, if there shall appear by such disclosure to be a sufficiency for the same, otherwise for so much as shall appear by the same to be in his hands.

SEC. 14. Whenever it shall appear that several persons, copartnerships or corporations had property of the defendants as such trustee, the plaintiff may sue each separately and recover the amount in his hands until such plaintiff shall receive full payment of his judgment against the original defendant, with interest and costs.

SEC. 15. Any trustee, after final judgment against the defendant may satisfy such judgment or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor, and such payment shall avail for his discharge, as against both plaintiff and defendant, for the amount thereof.

SEC. 16. If it shall appear by the disclosure that the personal estate in the hands of the trustee belonging to the defendant did not consist of money, but of one or more specific articles, such trustee may, after final judgment shall have been rendered against the defendant, surrender or deliver to the officer charged with the execution issued on such judgment such specific articles, that the same may be taken on such execution.

SEC. 17. Such surrender or delivery shall be a good discharge to the trustee for such articles, as to both plaintiff and defendant in the action.

42 SEC. 18. If any person, copartnership or corporation, after being served as trustee with a copy of any writ, and after having been tendered at the time of such service, two dollars and his travelling fees as a witness in the supreme court or court of common pleas, and one dollar and like travelling fees in any other court, shall refuse or neglect to render such an account on oath as aforesaid, of what personal estate of the defendant he had in his hands at the time of the service of such copy, such trustee shall be liable to satisfy the judgment that the plaintiff shall obtain against the de-

fendant in such writ, to be recovered by action on the case, except as provided in section twenty-two, chapter two hundred twenty-two.

SEC. 19. If several trustees shall neglect or refuse to render an account upon oath in the same case, then the plaintiff shall bring his action against all such trustees jointly, and in no other manner.

SEC. 20. Every person who shall be served with such copy of a writ against any defendant may file an answer to such action, and defend the suit in behalf and in the name of the defendant.

SEC. 21. If it shall appear by such disclosure that the person, copartnership or corporation who had been served as trustee with a copy of such writ had not any of the personal estate of the defendant in his hands, then such action shall be dismissed and the person who shall appear to defend the same shall recover his costs, unless the writ has been duly served on the defendant.

SEC. 22. Every person, copartnership or corporation served with a copy of a writ for attaching the estate of another in their hands shall be paid all lawful costs and charges which they shall incur in consequence of their being served with such writ of attachment by the person who brings the action, and so much of such charge
43 as shall be judged reasonable by the court before whom the cause shall be pending shall be allowed in the bill of costs.

SEC. 23. The word trustee, wherever occurring in this title shall be deemed to include the words attorney, agent, factor and debtor.

CHAP. 213, SEC. 10. Whenever any person shall be served with a copy of a writ by which he shall be sought to be charged as trustee of the defendant named therein and such person shall appear and answer to the action so commenced as to whether he is or is not a trustee of the defendant, the court in which such action is brought or may be pending shall determine whether the person so served is properly chargeable as the trustee of the defendant, and if chargeable, to what extent.

SEC. 11. Any person summoned as trustee of a defendant making a false answer or affidavit in any case or in any affidavit required of him or which he may take in any action, shall be liable to the plaintiff, in an action of the case, for any damages which may result to him from such false answer or affidavit.

CHAP. 222, SEC. 21. In every execution issued against any defendant in an action in which another person shall have been charged, as the trustee of such defendant, under the provisions of section ten of chapter two hundred thirteen, or by the default of the person served with a copy of the plaintiff's writ for the purpose of charging him as the trustee of the defendant to appear and file his affidavit therein, there shall be inserted next after the words "goods and chattels or real estate of the defendant," the words following, namely, "and the personal estate of the said defendant, in the hands and possession of (here insert the name of the trustee,) charged as trustee of the said defendant to the extent of (here insert the amount for which the trustee is charged)," or if the trustee shall be
44 charged by his default in not filing the necessary affidavit in said cause, insert in lieu of the clause fixing the extent to which such trustee shall be charged, the following, after the word

defendant, namely, "by the default of the said trustee to file his affidavit in said action."

SEC. 22. If any person named as the trustee of a defendant in any execution, who shall have had a judgment that he be charged as trustee rendered against him by default, shall make affidavit as to whether or not he had personal property of the defendant in his hands or possession at the time of the service of the original writ in said action upon him and stating the amount, if any, so in his hands, and that he failed to file an affidavit therein before he was charged by the court as the trustee of the defendant, either from want of actual notice of the service of the said writ, or by accident or mistake, and shall give such affidavit to the officer charged with the service of said execution, the officer shall annex such affidavit to his return to the said execution, and if the trustee shall pay to the said officer the money paid for his attendance at the time of the service of the original writ and another like sum, together with the sum stated in his affidavit to be so in his hands, if any, no further proceedings shall be had therein against such trustee, except as is provided in section eleven of chapter two hundred thirteen, and the officer shall pay the money paid to him by such trustee to the plaintiff.

Acts of 1884.

CHAP. 433, SEC. 1. Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate under an assignment or otherwise, may, on his own motion, become a party to the action so far as respects the title to said personal estate.

45 SEC. 2. The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant of the estate so attached, may allege and prove any facts not stated nor denied by said trustee that may be material in so deciding.

SEC. 3. Any question of fact arising upon such additional allegations may be tried and determined by the court or justice and in the court of common pleas and in the supreme court the same may be submitted to a jury in such manner as the court shall direct.

Acts of January, 1889.

CHAP. 752, SEC. 1. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands or possession of any person, copartnership, or corporation as trustee, the defendant may at any time after the service of such writ upon such trustee and before final judgment deliver to the officer who served such writ a bond in the penal sum of the amount of damages laid in the writ signed by the defendant or some one in his behalf, with sureties to the satisfaction of such officer with a condition therein that the same shall be null and void, if the final judgment in the action in which such writ was served shall be forthwith paid and satisfied after the rendition thereof.

SEC. 2. Upon the acceptance of such bond by such officer he shall forthwith deliver to the person, copartnership or corporation named as trustee in such writ a certified copy of the writ, with an endorsement thereon signed by said officer setting forth therein that he has accepted such bond and released the shares or personal estate in the hands or possession of such trustee from such attachment, and thereupon the shares or personal estate in the hands or possession of such trustee shall become discharged from such attach-
46 ment.

SEC. 3. In case such writ shall have been returned to the court to which it is made returnable and duly entered therein or in case the officer who served such writ shall from any cause be unable to perform the duties mentioned in section 2 of this act, then such bond shall be delivered to the clerk of the court to which such writ is made returnable, if there be a clerk, but if there be no clerk then to the justice thereof, and such clerk or justice shall proceed in the manner provided in sections 1 and 2 of this act.

SEC. 4. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.
H. L. BOUTWELL, *Att'y for Def't.*

Thereupon said agreed facts being presented to the court and seen and understood, on the twenty-third day of March, A. D. 1892, judgment is ordered thereon for the plaintiff.

Whereupon, on the twenty-fourth day of said March, 1892, the following is filed:

SUFFOLK, *ss:*

Superior Court, Mar. 23, 1892.

WILLIAM R. DUPEE ET ALi. (THEOPHILUS KING, by Amendment), Plaintiffs,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Agreement.

In the above-entitled action, in accordance with the direc-
47 tion of the court in ordering judgment that execution be stayed and the parties plaintiff and defendant file an agreement therefor, it is hereby agreed that execution shall not issue until all proceedings in the action referred to in the pleadings herein of John A. Cross *vs.* Brown, Steese & Clarke, now pending in the court of common pleas, in the county of Providence and State of Rhode Island and Providence Plantations, wherein this defendant has been summoned as alleged trustee, shall be finally determined.

CHARLES THORNTON DAVIS,
Att'y for Pl'ff.
H. L. BOUTWELL, *Att'y for Def't.*

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Albert Mason, Esquire, chief justice of our superior court, at Boston, in said county of Suffolk, this sixth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

Att.:

[L. S.] (S'g'd) JOS. A. WILLARD, *Clerk.*

48 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence County,* } *ss:*

Court of Common Pleas.

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE; LIPPITT WOOLEN CO., Trustee. } No. 4867.

Trustee's Additional Affidavit.

I, Charles H. Merriman, of Barrington, in said county of Bristol, in said State of Rhode Island, on oath depose and say:

That I am treasurer of the Lippitt Woolen Co., summoned as alleged trustee in the above-entitled action, and was such on the 23rd day of August, 1889.

That since the affidavit filed herein by me on behalf of said Lippitt Woolen Co. the said company has sold certain goods to one Hiram Leonard, of Boston, in the Commonwealth of Massachusetts, whereby said Leonard became indebted to said company, alleged trustee herein, and that thereafter, to wit, on or about the twentieth day of April, 1891, without the knowledge or consent of this affiant or of this alleged trustee, an action was commenced against this alleged trustee by William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees in insolvency of said Brown, Steese & Clarke, defendants herein, by a writ sued out of the superior court within and for the county of Suffolk, in said Commonwealth, in which action trustee process was served upon said Leonard, and the said credits of this alleged trustee in the hands of said Leonard were garnished.

49 The contract and indebtedness sued on in said action was the same contract and indebtedness as that in respect of which this alleged trustee has been summoned in this action.

The plaintiffs in said action were assignees under proceedings in insolvency in the court of insolvency within and for the county of Norfolk, in said Commonwealth, of the estate of said Brown, Steese & Clarke, and claimed that by virtue of the assignment to them in said proceedings the said indebtedness due from this alleged trustee to said Brown, Steese & Clarke, as aforesaid, and all right of action therefor had ceased to be in said Brown, Steese & Clarke and was

then vested in said plaintiffs, as assignees, as aforesaid, and that this alleged trustee was no longer indebted to said Brown, Steese & Clarke or entitled to account to them therefor, but only to said plaintiffs.

This alleged trustee, in defence of its property so garnished, appeared and filed an answer in said action, setting up the fact of the pendency of this suit and all the material facts connected therewith and denying the said claim of the plaintiffs, a copy of which answer appears in the exhibit hereto annexed; to which answer the plaintiffs demurred, and upon hearing their said demurrer was overruled; and thereafterward, upon motion, Theophilus King, of Boston, in said Commonwealth, was substituted as plaintiff in said action, having purchased from the said Dupee, Lewis and Colt, as assignees, as aforesaid, and the said assignees having under the order and direction of said court of insolvency sold to said King all claim of said Brown, Steese & Clarke against said Lippitt Woolen Co., in accordance with the laws of said Commonwealth. Said King thereupon filed a replication in said action, setting forth more fully both the proceedings in this action and his claim that he was entitled notwithstanding, by virtue of said insolvency proceedings
50 and the said assignment and purchase in pursuance thereof, both in this action and in his said suit there pending, and at all events in that suit, to the said indebtedness of this alleged trustee, and the allegations of fact set forth in the pleadings therein being true to the best of its knowledge and belief this alleged trustee admitted the same, but denied the conclusions of law drawn therefrom and claimed by the said plaintiff, and further agreed to a transcription of the statutes of this State in relation to trustee process as being the laws hereof.

(S'g'd) CHAS. H. MERRIMAN.

Subscribed and sworn to, in the city of Providence, this 21st day of April, A. D. 1892, by said Charles H. Merriman, before me—

(S'g'd) FRANK HEALY,
Notary Public.

By the Public Statutes of said Commonwealth of Massachusetts it is provided:

CHAP. 157.

That an inhabitant of said State owing debts, contracted while such inhabitant, may apply by petition to the judge of the county within which he has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, setting forth his inability to pay all his debts, and his willingness to assign all his estates and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in chapter 157 of the Public Statutes.

If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred
51 dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing

him forthwith as messenger to take possession of all the estate real and personal of the debtor, except such as may be by law exempt from attachment, and of all his deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

When two or more persons who are partners become insolvent, a warrant may be issued as provided in this chapter, by the judge for the county in which either of the partners has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judges for the county within which he resides, upon the petition of one or more of the partners (reasonable notice being first given by the judge to the other partners, if within the State, to show cause why its prayer should not be granted) or upon the petition of a creditor of the partners; upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from attachment.

The creditors shall, except as provided in section 41 of said chapter 157, choose one or more assignees of the estate of the debtor in the presence of the judge at the first meeting, the choice to be made by the greater part in value of the creditors who have proved their debts; but when the number of creditors present amounts to five and less than ten, the votes of two at least, and, when the number of creditors amounts to ten or more, the votes of three at least, shall be necessary for a choice, and no party or person having a preferred claim shall vote thereon, except so much of said claim as exceeds the amount preferred by law. If no choice is made by the creditors at said meeting, the judge shall appoint one or more
52 assignees. If an assignee so chosen or appointed fails within four days to express in writing his acceptance of the trust, the judge may fill the vacancy.

And by section 41 every election of an assignee shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election; or, if he deems that it will be for the interest of the parties concerned, he may at the first meeting appoint one or more disinterested persons to be assignee or assignees of the estate of the debtor, without any election by the creditors.

The judge shall, by an instrument under his hand, assign and convey all the estate real and personal of the debtor, except such as is by law exempt from attachment, and all his deeds, books, and papers relating thereto.

The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him, at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The

assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate.

If a debtor whose property is attached conveys before judgment and execution in the suit any part of such property, and
53 subsequently thereto, and before execution issues proceedings are commenced by or against him as an insolvent debtor, or if a dissolution of an attachment under the preceding section might prevent the property attached from passing to the assignee, the judge before whom proceedings in insolvency are pending, or the court to which the process of attachment is returnable, may, upon application made on or before the day of the third meeting of creditors by any person interested, and cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate; and the amount recovered, exclusive of costs due to the original plaintiff, shall vest in the assignee.

He shall have the like remedy to recover all the estate, debts, and effects in his own name, as the debtor might have had if no assignment had been made. In suits prosecuted by the assignee, the assignment made by the judge shall be conclusive evidence of his authority to sue.

The assignee shall account for all the estate and effects of the debtor that vest in him by the assignment, at the appraisement, except as herein provided. He shall make no profit by the increase and sustain no loss by the decrease or destruction, without his fault, of any part of the estate; if he sells any thereof for more than the appraised value, he shall account for the excess, and, if he sells for less, he shall be allowed for the loss, if it appears to the court that the sale was expedient and for the interest of all concerned in the estate; and in either case the assignee shall exhibit to the court a true account of sales, and shall sell the estate at public auction unless the court for sufficient cause, upon petition therefor filed, otherwise orders.

54 He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate or of debts due to it to the determination of arbitrators to be chosen by him and the other party to the controversy, and may under such direction compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

CHAP. 77, SEC. 12. Upon a promissory note payable on demand, a demand made at or before the expiration of sixty days from the date thereof shall be deemed to be made within a reasonable time; and any act, neglect, or other thing, which by the rules of law and the custom of merchants is deemed equivalent to a presentment and demand on a note payable at a fixed time, or which would dispense with such presentment and demand, shall, if it occurrs at or before

the expiration of said sixty days, be deemed a dishonor of such note, and shall authorize the holder thereof to give notice of the dishonor to the endorser, as upon a presentment to the promissor and his neglect or refusal to pay the same. A presentment of such note to the promissor and a demand of payment shall not charge the endorser, unless made on or before the last day of said term of sixty days.

SEC. 14. In an action on a promissory note payable on demand, brought by an endorsee against the promissor, any matter shall be deemed a legal defence which would be a defence to a suit on such note brought by the promisee, except that no matter arising after notice of the endorsement or transfer of such note has been given to the promissor shall constitute a defence.

55 Whereupon, upon hearing and consideration thereof, said court ordered judgment for the plaintiff in said action, thereby adjudging, as this affiant is advised, that this alleged trustee is no longer indebted or liable to said Brown, Steese & Clarke, the principal defendants in this action, but only to said King, and the plaintiff has duly taken judgment therein, and said judgment is still in full force and binding upon this alleged trustee, although execution thereon has been stayed to await the final adjudication of these proceedings.

A copy of the record of said suit, duly certified and authenticated, is hereto annexed and made a part hereof.

Wherefore this affiant, on behalf of said alleged trustee, submitting that it can in no event upon the foregoing facts be made twice liable or chargeable for this its single indebtedness, and submitting itself to the judgment of this honorable court thereon, prays that it may be discharged as trustee herein.

LIPPITT WOOLEN CO.,
(S'g'd) By CHAS. H. MERRIMAN, *Treasurer.*

56 (*Copy Answers of the Lippitt Woolen Company to Interrogatories Filed on Behalf of Plaintiff. Filed June* 24, 1893.)

PROVIDENCE, *sc:*

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } Law. 4867.

Interrogatories in behalf of the plaintiff to the Lippitt Woolen Co. as trustee in the above-entitled cause.

1. Have you since the service of the writ upon you in this case made any special deposit of the amount disclosed by your original affidavit as due from you to the defendant; if so, when and where did you make such deposit and has such deposit remained to the present time; if not, when and how has it been changed from time to time and where is it now?

2. Have you always since said service upon you kept said sum so due from you to the defendants separate and apart from your other moneys; if so, when did you so set it apart and how and where?

3. Have you not sometimes since such service upon you used said sum of money in your business in the same or like manner as if such service had not been made upon you?

And if you say that you have not, explain fully how your use of it has been changed in consequence of such service upon you.

57 State fully where said money was at the time of such service upon you, how and where invested or deposited, and how, when, and where from time to time to the present time such investment or deposit has been changed.

4. Who in fact personally retained, employed, or requested Mr. H. L. Boutwell to appear and act for you in the case against you in the superior court for Suffolk county, Massachusetts, referred to in your supplemental affidavit filed in said case?

5. Was such retainer, employment, or request originally authorized or has it since been ratified and adopted by you; if so, when and how?

6. Please state what communication- by letter or telegraph have passed between you or any office- of yours and said Boutwell or any other person respecting said case in said superior court or respecting the alleged attachment therein, either before or after said attachment was made, and annex to your answer to this interrogatory full copies of all such communications, letters, and telegrams sent or received by you in any way referring to the same.

7. If the communications or any of them between you or any officer of yours and said Boutwell or any other person respecting said last-named case or attachment, either before or after the commencement of the same, were verbal, state the same or the substance of the same and each of them fully, and state when, where, and with whom the same respectively were had or took place.

8. Have you paid or agreed to pay said Boutwell anything for his services in said case; if so, when, where, and how and how much?

9. Have you or either of your officers any agreement or understanding with any person or persons whomsoever respecting your being called upon or not being called upon to pay the judg-

58 ment in said case or any part of it? If so, state fully such agreement or understanding and when and where and with whom made or had.

And if in writing or evidenced by any writing, either letter or other writing, annex to your answer full copies of the same.

(S'g'd) JAMES TILLINGHAST,
Pl'ff's Attorney.

59 PROVIDENCE, *sc:*

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK.

Answers of the Lippitt Woolen Company, Alleged Trustee in the Above-entitled Cause, to Interrogatories Filed on Behalf of the Plaintiff.

Answer to interrogatory 1. No. This company never made any such deposit.

Answer to interrogatory 2. No; it was never so set apart.

Answer to interrogatory 3. It is impossible to state. This company has used all its money as it chose from time to time without any distinction. At the time of the service of the writ in this case upon this company its moneys were in various banks and individuals' hands, and has fluctuated in amount from time to time since then, according to the necessities of its business.

Answer to interrogatory 4. I do not know who personally retained Mr. Boutwell. I left the matter of defending that suit and retaining counsel in Boston entirely in the hands of the counsel for the company here, Mr. Roelker.

Answer to interrogatory 5. This question is answered by my answer to number 4.

60 Answer to interrogatory 6. Copies of all correspondence between our counsel here and Mr. Boutwell are hereto annexed and made part of this answer.

Answer to interrogatory 7. There were no such verbal communications.

Answer to interrogatory 8. Made no special agreement with Mr. Boutwell about his services, but expect to pay him a reasonable sum; have not yet received any bill.

Answer to interrogatory 9. This affiant is advised that this interrogatory is immaterial, irrelevant, and incompetent, and for these and other reasons need not be answered, but this alleged trustee being willing that all the facts should be known, but unwilling that its right to a discharge should be prejudiced by the appearance of unnecessary matters, without waiver of its objection that the same is immaterial and irrelevant as aforesaid and insisting thereon, says: There is the stipulation which appears in the record of judgment, a duly authenticated copy of which is annexed to and made a part of the supplemental affidavit of this alleged trustee. Further, this alleged trustee is advised that, as a matter of law, the plaintiff in the judgment, having submitted to the jurisdiction of this court, will, if his standing be sustained, be bound by its decision, whatever that decision may be and notwithstanding his said judgment, although he may be entitled to a reversal of that decision, if adverse, upon appeal or writ of error to our supreme court or to the Supreme Court of the United States, brought either in his own name and behalf or as of right in his own behalf,

but in the name and with the consent of this alleged trustee, upon properly indemnifying this alleged trustee against all the
61 expense and costs of the prosecution of such an appeal, writ of error, or other method of retrial, and that this alleged trustee, for its own protection in the premises, would equally be entitled and in duty bound to seek such retrial and reversal. Besides, this alleged trustee is assured by that plaintiff or his attorneys that he believes and contends that, whether this alleged trustee is now or ever was chargeable herein, properly depends upon the decision of Federal questions, and that upon these Federal questions he is entitled to prevail as against the plaintiff in these garnishment proceedings, or at least that this alleged trustee would on such questions be entitled to a discharge, but that if the plaintiff in said judgment and this alleged trustee are wrong in this belief and contention, and it shall be so decided by the court of final resort, then in that event said plaintiff will not, even if he could, enforce any double liability against this alleged trustee, and to the foregoing effect there is an understanding between the parties not in writing nor expressly formulated in terms nor otherwise than morally obligatory.

This alleged trustee, further answering this and interrogatories 4, 5, 6, and 7, says that counsel for the plaintiff herein was informed by this alleged trustee, solicitous for its own protection, of the institution of the suit in Massachusetts against this alleged trustee, and asked how it affected him, who replied, "Not in the slightest." Nevertheless, for the protection of its property which had been attached in Massachusetts, without its knowledge and consent and for its own protection against the possibility of being subjected to a double liability, this alleged trustee deemed it pertinent and advisable to appear and defend to that end and to the end that these garnishment proceedings might be fully set up by them. This alleged trustee never sought to prevent the assignee of the claim from
62 properly raising or presenting any Federal question he might desire, nor does he now so seek, but, on the contrary, two States having claimed jurisdiction over the same subject-matter or *res*, to wit, the debt of this alleged trustee of this State to the principal citizens and residents of Massachusetts, this alleged trustee submits that for its protection it was and is necessary that such Federal questions should be properly raised and presented and settled, if necessary, by the commonalty of all the States on questions of conflict of jurisdiction.

This alleged trustee, further answering, is informed that James B. Case, representing a bank creditor of said defendants not parties to any of the litigation herein referred to, but interested in the joint and equal distribution of the estate of said Brown, Steese and Clarke to and among its creditors, and to that end desirous not only that all its assets should be collected, but also that all the legal rights of that estate should be preserved by submission of all the questions involved to all pertinent jurisdictions, and being also considerate of the hardship which would be imposed upon this alleged trustee should a double liability arise from conflict of jurisdictions, entered into a stipulation with a stockholder of this alleged trustee, one

R. L. Lippitt, not then an officer, a copy of which is hereunto annexed, the purport of which was in accordance with the understanding aforesaid, to indemnify this alleged trustee in a certain sum of money in the event that the legal rights of the plaintiff herein and the plaintiff in said judgment in Massachusetts should result in the double liability of this alleged trustee, without relief or remedy in this court or any courts of the United States; which stipulation, however, was not between any of the parties to any of said litigation; and the obligors insist that as conditions of any liability
63 on his or their part under the same every lawful objection to the charging of this alleged trustee shall be availed of by this alleged trustee in this court and in any Federal court wherein a retrial or review, if charged, may be obtained. Further than this neither this alleged trustee nor any officer of it has any agreement or understanding with any person or persons whomsoever that it shall or that it shall not be called upon to pay the said judgment in Massachusetts or any part of it.

LIPPITT WOOLEN CO.,
(S'g'd) By CHAS. H. MERRIMAN, *Treasurer.*

PROVIDENCE, *ss:*

Subscribed and sworn to this 23rd day of June, A. D. 1893, by Charles H. Merriman, treasurer of the Lippitt Woolen Company, before me—

(S'g'd) FRANK HEALY,
Notary Public.

64 OCT. 19, 1891.

H. A. Boutwell, Esq.

DEAR SIR: We are counsel for the Lippitt Woolen Company here, and they have requested us to inquire of you just how the case against them stands in your court, wherein you appear for them, and also to request you to keep us posted as to its progress.

Yours truly, MINER AND ROELKER,
By HEALY.

MARCH 9, 1892.

H. L. Boutwell, Esq., Lippitt Woolen Co.

DEAR SIR: Enclosed please find agreed statement of facts and answer to amended declaration, which please sign and file in the papers in the case in court.

Yours truly, W. G. ROELKER,
By HEALY.

65 BOSTON, MASS., *October* 20, 1891.

Miner & Roelker, Esqrs., 31 Market Sq., Providence, R. I.

DEAR SIRS: Your favor inquiring about suit of Dupree *v.* Lippitt Woolen Co. is at hand. The case is No. 4361 and now pending in the superior court for Suffolk county. Def't's answer was filed in

due season. To that the plaintiffs filed a demurrer. After a hearing upon demurrer Judge Bishop overruled the demurrer. This was subsequently reargued, but as yet no change has been made, and the entry stands "demurrer overruled." The case has not yet been put upon the trial list.

Yours truly, H. L. BOUTWELL.

66 Know all men: That I, James B. Case of Weston in the Commonwealth of Massachusetts, am firmly bound unto Robert Lincoln Lippitt of the city and county of Providence and State of Rhode Island in the sum of twenty thousand dollars, to be paid to s-id Robert Lincoln Lippitt, his heirs, executors, administrators or assigns, to which payment I bind myself my heirs, executors and administrators.

Sealed with my seal and dated this first day of June, A. D. 1891.

The condition of the above obligation is such that

Whereas the Lippitt Woolen Company, a corporation legally created under the laws of the State of Rhode Island and located and doing business in said city of Providence was on the 13th day of August, A. D. 1889, served with garnishee process issuing out of the court of common pleas within and for the county of Providence and State of Rhode Island in an action wherein one John A. Cross of said Providence is plaintiff and Gideon P. Brown, Edward Steese and Amasa Clarke, all citizens of said Commonwealth of Massachusetts, copartners as Brown, Steese & Clarke, are defendants and hath made and filed its answer therein as garnishee admitting and setting forth its indebtedness to said Brown, Steese & Clarke of $11,938.39 in money and 357 wool sacks, and

Whereas the said Lippitt Woolen Company hath also been sued in an action issuing out of the superior court within and for Suffolk county and Commonwealth of Massachusetts as garnishee, wherein William R. Dupee and others are plaintiffs and said Lippitt Woolen Company is defendant and hath filed its answer therein disclosing and admitting that it is indebted to said Brown, Steese & Clarke in the amount of $11,938.39, and three hundred and fifty-seven wool sacks, now if the above-bound James B. Case, his heirs, exec-

67 utors, or administrators, shall pay or cause to be paid to the said Lippitt Woolen Company, its successors or assigns any and all sums of money which it shall hereafter be called upon to pay and pay over and above one payment of said sum of $11,938.39, and the value of said 357 wool sacks for or by reason of any judgment or decree of any court whatsoever together with any and all sums of money expended by it for counsel fees or other legal expenses or costs of any court in any litigation connected with the said matters then this obligation to be void, otherwise to be and remain in full force and effect.

JAMES B. CASE. [SEAL.]

Signed, sealed, and delivered in presence of—

T. KING.

68 (*Copy of Amendment to Answer of Lippitt Woolen Company. Allowed Filed—Rogers, J.—January* 27, 1894.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence County,* } ss:

Supreme Court, Common Pleas Division.

JOHN A. CROSS
v.
BROWN, STEESE & CLARK; LIPPITT WOOLEN COMPANY, Trustee. } No. 4867.

Amendment to trustee's affidavit.

I, Charles H. Merriman, of Providence, in said county of Providence, on oath depose and say:

First. That I am treasurer of the Lippitt Woolen Company, summoned as alleged trustee in the above-entitled action, and was such on the 23rd of August, 1889.

Second. That the indebtedness of $11,938.39 of this alleged trustee to the principal defendant, as to which this alleged trustee has been summoned in this action, is an indebtedness resulting from the sale of certain wool by the defendants to this alleged trustee made by the defendants, all of whom were citizens of Massachusetts, and having their only place of business in that State at Boston, in said State of Massachusetts, where all of said wool was delivered and where the said $11,938.39, the contract price thereof, was to be paid, and the said indebtedness, although fixed and definite, had not at the time of service of process in this action upon this alleged trustee become by the terms of said sale, either in whole or in any part, payable, nor did any part of the same become payable until September 12, 1889.

69 Third. Referring to my original affidavit, filed herein December 6, 1889, in which I answered that there was in the hands and possession of the said Lippitt Woolen Company, as the trustee of said defendants, the said sum of $11,938.39 and certain wool sacks, I further say that at the time of filing said original affidavit the claim of the adverse claimant, Theophilus King, to said sum was not known to this alleged trustee and was not meant to be anticipated by said affidavit, and many of the facts set forth in said claim as filed in this action did not then exist, especially the suit and judgment against this alleged trustee in Massachusetts, and the description of this alleged trustee in said original affidavit as "the trustee of said defendants" was not meant to carry any conclusion of law or admission of its liability to be charged in this action, so as to preclude a consideration of the facts afterward alleged or appearing in said action, or any contingency which ought, especially for the protection of this alleged trustee, to be taken into account in determining the question as to whether or not, and in what amount, this alleged trustee shall be charged, if at all.

(S'g'd) CHAS. H. MERRIMAN.

PROVIDENCE, *sc:*

In the city of Providence, this 8th day of January, A. D. 1894, subscribed and sworn to by said Charles H. Merriman before me—

(S'g'd) FRANK HEALY,
Notary Public.

70 (*Copy of Plaintiff's Interrogatories to the Lippitt Woolen Co. Filed February 3, 1894, at 9.10 a. m.*)

PROVIDENCE, *sc:*

Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE AND CLARKE. } No. 4867.

Interrogatories in behalf of the plaintiff to the Lippitt Woolen Company.

1. Did you make your last supplemental affidavit, filed January, 1894, upon your own original motion or at the request or suggestion of some other person, and of what other person?

And if you say that the suggestion came to you through your local counsel please inquire and state from whom, naming the person, the original request or suggestion to make the same came to him.

2. Who, in fact, prepared the original draft of this your said last supplemental affidavit? And if such original draft was presented to your local counsel please inquire and state who presented the same to him.

3. Who is it agreed or understood is to pay, or, if paid by you in the first instance, is to eventually reimburse you for your expenses and counsel fees incurred in respect of this your present supplemental affidavit?

(S'g'd) JAMES TILLINGHAST,
Plaintiff's Attorney,
By WM. R. T.

71 (*Copy of Answers of Lippitt Woolen Co. to Plaintiff's Interrogatories. Filed February 3, 1894. Filed February 13, 1894.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. }

Answers of the Lippitt Woolen Co.

Answer to interrogatory number one. I made the last supplemental affidavit at the suggestion of my counsel, Mr. Roelker. His

attention had been called to the co-dition of the disclosures, as I am informed, by Mr. Coombs, who, in the hearings, was representing certain parties in interest among them and in the absence of their respective counsel, being, as I am also informed, certain of the alleged trustees; and upon a certain ruling being made by the court, which took him somewhat by surprise, he suggested to the court that all of the alleged trustees should be notified, so that if they had any desire to amend or supplement their disclosures, in view of the ruling, they should have an opportunity. The court thereupon, at Mr. Coombs' request, granted a continuance; and the attention of our counsel was called, through Mr. Coombs, to the facts aforesaid and to the condition of the disclosures, in respect of which the supplemental affidavit was made.

Answer to interrogatory number two. As I am informed, Mr. Coombs, at the time he caused Mr. Roelker's attention to be called to the ruling of the court and the condition of the disclosures, also sent to him a draft of such further disclosure as he thought would cover certain criticisms which he made upon the disclosure as it then stood. The supplemental affidavit as filed, however,
72 differs from said original draft somewhat, as I am informed.

Answer to interrogatory number three. I have no special understanding with reference to the matter of expenses as connected with said supplemental affidavit.

(S'g'd) CHAS. H. MERRIMAN.

PROVIDENCE, *sc:*

Subscribed and sworn to, in the city of Providence, this 13th day of February, A. D. 1894, by Charles H. Merriman, before me—

(S'g'd) FRANK HEALY,
Notary Public.

73 (*Copy of Motion to Intervene, T. King. Filed March* 16, 1892.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *ss:*
Providence County,

Court of Common Pleas.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Motion to intervene.

And now comes Theophilus King, of Quincy, in the Commonwealth of Massachusetts, claiming title by contract of purchase from William R. Dupee, Weston Lewis, and Samuel P. Colt, as they are assignees in insolvency, under appointment by the court of insolvency within and for the county of Norfolk and Commonwealth aforesaid, of the insolvent estates of said several defendants, as hereinafter more fully set forth, to all the personal estate of said defend-

ants in the hands of the Wanskuck Co. and the Lippit Woolen Co., alleged trustees by attachment on trustee process in the above-entitled action, and moves that he may become a party to said action so far as respects the title to said personal estate, and may recover and receive the same should said alleged trustee- not be discharged in said process, and may be heard as to the charging of the said alleged trustees therein.

And said King says that he claims said personal estate under assignment as follows:

That the laws of said Commonwealth of Massachusetts in relation to insolvent debtors provide (Public Statutes, chapter 157, to which and to all laws of said Commonwealth amendatory thereof this claimant craves leave to refer and makes a part hereof)
74 that an inhabitant of said State owing debts, contracted while such inhabitant, may apply by petition to the judge of the county within which he has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, setting forth his inability to pay all his debts and his willingness to assign all his estates and effects for the benefit of his creditors, and praying that such proceedings may be had in the premises as are provided in chapter 157 of the Public Statutes.

If it appears to the satisfaction of the judge that the debts due from the applicant amount to not less than two hundred dollars, he shall forthwith issue a warrant under his hand to the sheriff of the county or either of his deputies, directing him forthwith as messenger to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from attachment, and of all his deeds, books of account, and papers and keep the same safely until the appointment of an assignee.

When two or more persons who are partners become insolvent, a warrant may be issued, as provided in this chapter, by the judge for the county in which either of the partners has last resided for three consecutive months before the application, if he has resided for that time in any county, otherwise to the judge for the county within which he resides, upon the petition of one or more of the partners (reasonable notice being first given by the judge to the other partners, if within the State, to show cause why its prayer should not be granted) or upon the petition of a creditor of the partners, upon which warrant all the joint stock and property of the company and the separate estate of each of the partners shall be taken, except such parts as may be by law exempt from
75 attachment.

The creditors shall, except as provided in section 41 of said chapter 157, choose one or more assignees of the estate of the debtor in the presence of the judge at the first meeting, the choice to be made by the greater part in value of the creditors who have proved their debts; but when the number of creditors present amounts to five and less than ten the votes of two at least, and when the number of creditors amounts to ten or more the votes of three at least, shall be necessary for a choice, and no party or person having a preferred

claim shall vote thereon except on so much of said claim as exceeds the amount preferred by law. If no choice is made by the creditors at said meeting, the judge shall appoint one or more assignees. If an assignee so chosen or appointed fails within four days to express in writing his acceptance of the trust, the judge may fill the vacancy.

And by section 41 every election of an assignee shall be subject to the approval of the judge, and when, in his judgment, it is for any cause needful or expedient he may appoint additional assignees or order a new election, or, if he deems that it will be for the interest of the parties concerned, he may at the first meeting appoint one or more disinterested persons to be assignee or assignees of the estate of the debtor without any election by the creditors.

The judge shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the debtor, except such as is by law exempt from attachment, and all his deeds, books, and papers relating thereto.

The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully
76 sold, assigned, or conveyed or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate.

He shall have the like remedy to recover all the estate, debts, and effects in his own name as the debtor might have had if no assignment had been made. In suits prosecuted by the assignee the assignment made by the judge shall be conclusive evidence of his authority to sue.

The assignee shall account for all the estate and effects of the debtor that vest in him by the assignment at the appraisement except as herein provided. He shall make no profit by the increase and sustain no loss by the decrease or destruction, without his fault, of any part of the estate; if he sells any thereof for more than the appraised value, he shall account for the excess, and if he sells for less he shall be allowed for the loss, if it appears to the court that the sale was expedient and for the interest of all concerned in the estate; and in either case the assignee shall exhibit to the court a true account of sales, and shall sell the estate at public
77 auction unless the court for sufficient cause, upon petition therefor filed, otherwise orders.

He may, under the direction of the judge, submit any controversy arising in the settlement of demands against the estate or of debts due to it to the determination of arbitrators to be chosen

by him and the other party to the controversy, and may, under such direction, compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.

And that by virtue of and in accordance with the statutes of said Commonwealth therefor providing, as appears by the records of said court of insolvency, said Edward Steese and Amasa Clarke, members of said firm of Brown, Steese & Clarke, becoming insolvent, filed a petition in said court of insolvency within and for said county of Norfolk and Commonwealth of Massachusetts, in which county both said Steese and said Clarke had resided for more than three consecutive months theretofore, praying that said firm of Brown, Steese & Clarke might be adjudged insolvent, and that the estates of said insolvent debtors might be seized and distributed according to law; that reasonable notice was duly given by the judge to said Brown, who on the 23d day of August appeared and assented thereto and submitted himself to the jurisdiction of said court; that on the 21st day of August, 1889, as appears by said records of said court, and upon hearing and inquiry by the court as provided by law, as aforesaid, and a finding of all pertinent facts requisite in the premises, said firm and the members thereof were adjudged insolvent debtors under the aforesaid laws, and a warrant in insolvency issued from said court against the joint and several estate of said
78 Brown, Steese & Clarke, the first publication of the notice of issuing thereof being made on the 23d day of August, 1889, and on the 4th day of September, 1889, said Dupee, Lewis, and Colt were duly elected and appointed assignees in insolvency in said case; that on the said 4th day of September, 1889, the judge of said court of insolvency, by an instrument under his hand, as provided by the laws of said Commonwealth of Massachusetts in that behalf, as aforesaid, assigned and conveyed to said Dupee, Lewis, and Colt, as assignees, as aforesaid, all the estate, real and personal, of said debtors and each of them, except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto, which assignment vested in said assignees all the property of said debtors and each of them, real and personal, which they or either of them could have lawfully sold, assigned, or conveyed or which might have been taken on execution upon a judgment against them or either of them at the time of the first publication of the notice of the issuing of said warrant, and all debts due to the debtors or either of them or any persons for their use, and all their rights of action for goods or estate, real or personal.

And that said assignees, under the direction and order of said court of insolvency, on or about the 19th day of November, 1890, sold to this claimant the claim of said firm of Brown, Steese & Clarke against said Wauskuck Co. and Lippit Woolen Co., alleged trustees in this action.

That the personal estate of said firm which the plaintiff in this action seeks to attach in the hands of the alleged trustees is indebtedness of said alleged trustees to said firm for wool purchased of it by them; that said firm was composed of Gideon P. Brown, Edward

Steese, and Amasa Clarke, all of whom were citizens of said
79 Commonwealth of Massachusetts, and that said firm was located and carried on business at Boston, in said Commonwealth, and had no place of business whatever elsewhere; that the contracts for said purchases of wool were made in said Commonwealth and with reference to the laws thereof and were there to be performed and the purchase price (whereof said indebtedness so sought to be attached, as aforesaid, is the balance remaining due) was there payable, to wit, at said Boston; that said court of insolvency acquired in its proceedings personal jurisdiction of all of said debtors, defendants in the above-entitled action, before said defendants entered their appearance in this suit.

That said court, by virtue of the laws of said Commonwealth in relation to insolvent debtors and the nature of the personal estate of said defendants in the hands of said alleged trustees, as aforesaid, also acquired jurisdiction of said personal estate.

That by virtue of the judicial findings and acts of said court, as aforesaid, the indebtedness due from these alleged trustees to the said firm of Brown, Steese & Clarke and all rights of action therefor ceased to be in said Brown, Steese & Clarke and were vested in said assignees and passed by said sale from said assignees to this claimant, and said alleged trustees were no longer indebted to said Brown, Steese & Clarke or entitled to account to them therefor, but only to this claimant.

This claimant says that said insolvent laws of Massachusetts are public acts of said Commonwealth, and that it is provided in and by said laws that the assignment by the judge to the assignee shall be effectual, subject to the provisions of section 47 of chapter 157 of the Public Statutes to dissolve any attachment on mesne
80 process made not more than four months prior to the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings; and by said section 47, if a debtor whose property is attached conveys before judgment and execution in the suit any part of such property and subsequently thereto and before execution issues proceedings are commenced by or against him as an insolvent debtor, or if a dissolution of an attachment under the preceding section might prevent the property attached from passing to the assignee, the judge before whom proceedings in insolvency are pending or the court to which the process of attachment is returnable may, upon application made on or before the day of the third meeting of creditors by any person interested, and cause shown thereon, order the lien created by the attachment to continue. The action may be continued or execution stayed until the assignee is chosen and takes charge of the action. The assignee may proceed with the action and levy the execution at the cost and expense of the estate, and the amount recovered, exclusive of costs due to the original plaintiff, shall vest in the assignee.

Wherefore this claimant, setting forth the judicial proceedings of said court of insolvency, as hereinbefore set forth, and the assignment of the estates of said insolvent debtors made in pursuance thereof within four months of all attachments in this case, as afore-

said, offers to make proof of the same, in accordance with the laws of the United States in that behalf, and asks that full faith and credit be given thereto in this honorable court, with the effect to dissolve any lien of attachment in behalf of the plaintiff herein upon said personal estate of the defendant in the hands of said alleged trustees.

81 This claimant, on advice, avers further that under the provisions and practical operation of the laws of the State of Rhode Island all attachments on mesne process of property belonging to a resident or land-owner in said State may be dissolved by the making of an assignment within sixty days from the date of such attachment by said resident or land-owner of all his property in said State to an assignee, citizen of said State of Rhode Island, in trust for the benefit of his creditors.

And the plaintiff says that also, in other respects and particulars, it appears in the laws and practice of the State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal, *pro rata* distribution of the estate of insolvents to and among their creditors and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

And this claimant further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States;" and this claimant, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such and being insolvent were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts and could not make valid voluntary assignments in violation thereof, nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither

82 of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island, nor could they secure an assignment of their assets solely to a citizen or citizens of Rhode Island, but the same were assigned in said proceedings to one citizen of said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty days from the date of the service of the trustee process in this suit.

And this claimant, referring to said insolvency proceedings and annexing a copy of the petition of the debtors and of the adjudication thereon and the warrant issued thereon and of the assignment of the assets of said insolvents to the assignees therein hereto and making all the same a part hereof, claim that all attachments in this suit were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne process upon and to effect an equal, *pro rata* distribution of their assets by assignments to citizens

of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, this claimant claims pertain also to the citizens of the several States under the Constitution of the United States aforesaid.

This claimant further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in this action, nor was any appearance for them or any of them entered herein until after the assignment of their assets in said insolvency proceedings aforesaid.

And this claimant, relying upon said insolvent laws and said proceedings in insolvency in said court of insolvency as a
83 court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide "that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings in every other State," and that this State and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in this State in said assignees free from said alleged attachments in this suit.

This claimant also pleads and relies upon article 6 of the Constitution of the United States, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding."

And this claimant further says that by a certain contract or agreement made under the order and direction of the court of insolvency within and for the county of Norfolk this claimant purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm, and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim- allowed by said court of insolvency in said proceedings against said insolvent estates, whereby this claimant acquired an active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of
84 said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in these or any other proceedings or by virtue of said laws.

This claimant, referring to the instruments sued on in this case, alleged as promissory notes, show- that the same are dated respectively April 9th and May 7th, 1889.

And that the contracts therein contained were made in Boston, in the Commonwealth of Massachusetts, and by the express tenor of said instruments were to be performed at the place of business of the International Trust Company in said Boston. Wherefore said contracts are governed wholly by the laws of said Commonwealth of Massachusetts.

That by the laws of said Commonwealth (Public Statutes of Massachusetts, chapter 77, section 12) it is not contemplated, as this claimant is advised, that such instruments shall be negotiable for more than sixty days from their dates, or that such instruments shall be endorsed as negotiable paper after the expiration of sixty days from their dates, or that title in or to the same or the benefit of the obligation thereof shall be assigned and transferred after said period by endorsement merely, so as to authorize suit thereon in the name of any such alleged assignee or transferee, and that by Public Statutes of said Commonwealth, chapter 77, section 14, it is expressly provided that—

"In an action on a promissory note payable on demand, brought by an endorsee against the promissor, any matter shall be deemed a legal defence which would be a defence to a suit on such note brought by the promisee, except that no matter arising after notice of the endorsement or transfer of such note has been given to the promissor shall constitute a defence."

To which chapter of said Public Statutes this claimant begs
85 leave to refer and to make a part hereof.

And this claimant, without admitting that said Cross is a *bona fide* holder of said instruments or that said International Trust Company is not still the true owner thereof, says that said International Trust Company held said instruments, together with the collateral therein recited, without endorsing or transferring the same until long after the expiration of sixty days from their respective dates and until after said firm of Brown, Steese & Clarke had become insolvent and committed acts of insolvency and were subject to proceedings under the insolvency laws of said Commonwealth, which proceedings were duly instituted as aforesaid, and in which said Steese & Clarke, two of the members of said firm, have secured their discharges from all liability provable against them or said firm in said proceedings.

This claimant further says that said International Trust Co. held both of said alleged notes and all said collateral for more than sixty days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about September 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for many months; that on or about September 7th, 1889, the probable embarrassment of said firm had been published in said Boston and brought to the notice of said trust Co., after which, and on or about the same date, said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

86 Whereby, and by the laws governing said instruments, all actions upon said instruments instituted by said International Trust Company at the time of any alleged transfer thereof to said Cross would be defeated as against said Steese & Clarke and all attachments of the property of said firm vacated.

This claimant further shows that said instruments purport upon their faces to be amply secured by pledges of the negotiable obligations of third persons as collateral security for the payment thereof or any other indebtedness of said defendants to said International Trust Company, but to none other, and on information and belief says that said International Trust Company held other collateral for the payment of other indebtedness by said defendants to it, with like power to apply the proceeds of such other collateral to the payment of these instruments, and that said International Trust Company has become a party to said insolvency proceedings in Massachusetts and has therein rendered an account, wherein it charges itself with proceeds of the sale of the collateral to the instrument herein sued on, dated April 9, 1889, to the amount of eight thousand one hundred and twenty-two dollars and seventy cents, and still proves for a deficit of indebtedness of said firm to itself, on which it has secured large dividends from said Dupee, Lewis, and Colt, assignees as aforesaid; and this claimant says that the collateral to said instrument herein sued on, dated May 7, 1889, amounted at its face to the same sum as the obligation thereby secured, and such collateral has since been paid in full.

And this claimant further says that said Cross did not begin
87 and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in this action, but colorably only for the benefit of said International Trust Company.

Of all which facts — all rights, equities, and duties arising therefrom, as they then existed and were or might be thereafterwards exercised or enforced, said plaintiff at the time he acquired any interest in said instrument knew, or, as this claimant is informed, had sufficient notice to put him on such inquiry as would have discovered the same.

Wherefore this claimant claims that the promises in said instruments are to be performed only in the place of business of said International Trust Company and where an accounting may be had with it, and are enforcib*el* only in proceedings wherein the court has jurisdiction of said International Trust Company; that said instruments are not in law or equity separable from the security thereof; that at least $28,122.70, proceeds and collection of said collateral already received, should be credited on account thereof; that purporting to be endorsed by the International Trust Company, as well as secured by collateral, any holder thereof should exhaust any special fund or trust to which he may resort before proceeding even by competition with general creditors against the common fund of said insolvent defendant's estate, and that said obligations, being governed by the laws of said Commonwealth of Massachusetts, and for other reasons, as aforesaid and otherwise, will no longer sustain their action or entitle*d* the plaintiff to withhold any property herein attached from this claimant.

(S'g'd) By his att'y, CHARLES THORNTON DAVIS.

88 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } 88:

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate, is the register and proper certifying officer of said court, and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord eighteen hundred and ninety two.

(S'g'd) GEORGE WHITE,
Judge of the Court of Insolvency.

89 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } 88:

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having, by law, the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the following papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court.

In witness whereof I have hereunto set my hand and the seal of said court this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

90 To the honorable the judge of the court of insolvency in and for the county of Norfolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown, of Boston, in the county of Suffolk, constitute the firm of Brown, Steese and Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars each, contracted while such inhabitants, which they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

NORFOLK, *ss*:

AUG. 10, 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the
91 statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss*:

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it appearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss*:

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current at ten o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

92 (Endorsed:) Case No. 737. Debtor's petition and citation in the case of Brown, Steese & Clarke, insolvent debtors. Filed August 12, 1889. Warrant returnable —— 18. Aug. 12, cit. issued. Ret. Aug. 21, 1889. From the office of M. F. Dickinson, Jr., Equitable building, Boston, Mass. True copy. Attest: John D. Cobb, assist. register.

SUFFOLK, *ss:*

BOSTON, *August* 14*th*, 1889.

I this day served the within petition and order therein on the within-named Gideon P. Brown by leaving an attested copy thereof at his last and usual place of abode for his appearance at court as within directed.

FRED H. SEAVEY,
Deputy Sheriff.

Service	.50
Copy	1.50
Travel to serve	.40
" to return	.80
	$3.20

93 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] To the sheriff of said county of Norfolk or either of his deputies, Greeting:

You are hereby directed forthwith as messenger to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, and Gideon P. Brown, of Boston, in the county of Suffolk, copartners, doing business in said Boston under the firm name of Brown, Steese and Clarke, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice, inside, in the newspaper called the Boston Daily Advertiser, printed at Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice by mail or otherwise within five days after the date hereof to said debtors and to all the creditors upon the schedule of their creditors, to be furnished you by them within three days after the date hereof; which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in said county of Norfolk, on the first Wednesday of September next,
91 at ten o'clock in the forenoon.

And have you there this warrant, with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this

twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

95 (No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge, and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889, and all of said notices were according to the directions set out in said warrant.

Fees.

1. Service of warrant	$2.00
2. Necessary travel (at the rate of 4 cents a mile)	9.60
3. Notice to creditors (at 10 cents each)	15.50
4. Actual expenses in publishing notices as follows:	
Paid Daily Advertiser	3.00
Postage	3.00
5. Actual expenses in custody of property and in other services as follows:	
Cash paid keepers, 14 days	42.00
Custody of property, 14 days	14.00
	$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

96 NORFOLK, *ss:*

SEPT. 4, A. D. 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him, and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. Warrant. In the case of Brown, Steese & Clarke, insolvent debtors. Date, August 21, 1889. Return-

able, 1st Weds., Sept., 1889. First publication, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

97 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese & Clarke, copartners, insolvent debtors.

Know all men by these presents: that whereas William R. Dupee of Newton in said Massachusetts, Samuel P. Colt of Providence in the State of Rhode Island and Weston Lewis of Boston in said Massachusetts, have been duly appointed assignees in said case;

Now, therefore, I, George White, Esquire, judge of the court of insolvency, in and for said county of Norfolk, by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the laws of said Commonwealth, do hereby convey and assign to the said assignees all the joint and separate estate, real and personal, of the said Gideon P. Brown, Edward Steese and Amasa Clarke, copartnership, insolvent debtors, including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine, excepting such as may be by law exempted from attachment, with all their joint and separate deeds, books and papers relating thereto.

To have and to hold, all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt & Weston Lewis, assignees as aforesaid and their heirs, forever; in trust nevertheless, for the uses and purposes, with the powers and subject to the conditions and
98 limitations set forth in the chapter and laws aforesaid.

In witness whereof, I, the said judge, have hereunto set my hand and caused the seal of said court to be affixed, on this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

(Endorsed:) Case No. 737. Assignment. In the case of Brown, Steese & Clarke, insolvent debtors. Recorded, vol. 4, page 84. True copy of record. Attest: John D. Cobb, assist. register.

99 Charles Thornton Davis, attorney and counsellor at law, 54 Devonshire street.

BOSTON, *Mar.* 15, 1892.

Geo. E. Webster, Esq., clerk.

DEAR SIR: Please file the enclosed in Cross *vs.* Brown, Steese & Clarke. It is to take the place of the one now on file by arrange-

ment made on Saturday, & the hearing on Apr. 9 will be upon this copy. The motion of Bullens & Sawyer remains as it is.

Very truly yours,

(S'g'd) C. T. DAVIS.

100 (*Copy of Amendment to King Petition to Intervene. Filed May 7, 1892.*)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *ss:*

Court of Common Pleas.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } 4867.

Amendment to petition by Theo. King to intervene as adverse claimant.

On page 7, immediately before the last sentence in the first paragraph (which commences, "That said court"), the claimant moves to insert the following:

"And, further, that said indebtedness, though absolute, was not yet due and payable at the time of any service of process upon an alleged trustee in this action, the time at which said purchase price was under the terms of said contract payable not having then arrived."

(S'g'd) By his attorney, C. T. DAVIS.

101 (*Copy of Motion of T. King to Amend Petition to Intervene. Filed March 6, 1893.*)

PROVIDENCE, *sc:*

Court of Common Pleas, December Term, 1892.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

In re Theophilus King's motion to intervene.

Motion to amend.

And now comes the said Theophilus King and moves for leave to amend his motion to intervene in the above-entitled action by adding thereto the following allegations:

And this claimant further says that on or about the 20th day of April, A. D. 1891, a suit was commenced against the said Lippitt Woolen Company in the superior court within and for the county of Suffolk and Commonwealth of Massachusetts, wherein the said William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees, were named plaintiffs, the said Lippitt Woolen Company, principal

defendant, and one Hiram Leonard, a debtor of said Lippitt Woolen Company, was summoned as supposed trustee of said Lippitt Woolen Company.

Afterwards, on March 1, 1892, the writ and declaration in said action were on motion duly amended, naming the said Theophilus King as plaintiff in place of said William R. Dupee, Weston Lewis, and Samuel P. Colt assignees, and setting forth in the writ the fact of sale and purchase by the plaintiff, the said Theophilus
102 King, so as to make the suit conform to section 109 of said chapter 157 of the Public Statutes of Massachusetts, which section provides as follows: "Suits upon claims sold by assignees shall be brought in the name of the purchasers. The fact of sale and of purchase by the plaintiff shall be set forth in the writ, and the defendant may avail himself of any matter of defense of which he could have availed himself in a suit upon the claim by the assignee. Costs in such suits shall be recovered by or against the plaintiff, and the assignee shall not be liable therefor."

The contract and indebtedness sued on in said suit was the same contract and indebtedness as that in respect of which the said Lippitt Woolen Company has been summoned as alleged trustee in this action.

The said Lippitt Woolen Company appeared in said suit and answered, setting up in its said answer the garnishment proceedings against it in this action and claiming that by virtue of the laws of Rhode Island and his attachment thereunder the said Cross had a lien on said debt of said Lippitt Woolen Company to said Brown, Steese & Clarke, and that the assignment by the judge of the said court of insolvency could not and therefore did not transfer to and vest in the said assignees or the said King, as plaintiff, the said debt. On the said answer and on the plaintiff the said King's replication to said answer, and on an agreed statement of the facts, including the pertinent laws of Rhode Island and of Massachusetts, the said Theophilus King recovered judgment against the said Lippitt Woolen Company on its obligation under said contract, a duly authenticated copy of which judgment, record, and proceedings is hereto annexed and made a part hereof.

(S'g'd) By his att'ys, JOHN C. COOMBS AND
CHAS. THORNTON DAVIS.

103 [L. S.] COMMONWEALTH OF MASSACHUSETTS:

I, Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, do certify that Jos. A. Willard, Esq., whose signature is affixed to the papers hereunto annexed, is clerk of said superior court within and for the county of Suffolk, and hath the keeping of the files, records, and proceedings of said court within and for said county, and of the late superior court of the county of Suffolk aforesaid; that he is by law the proper person to make out and to certify copies of the files, records, and proceedings of said several courts; that full faith and credit are and ought to be given to his acts and attestations done, as aforesaid, and that his attesta-

tion to the papers hereunto annexed, being numbered 1 to 56, inclusive, of the files, records, and proceedings of the said superior court, is in due form.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereunto affixed this 3rd day of March, in the year of our Lord one thousand eight hundred and ninety-three.

(S'g'd) ALBERT MASON,
Chief Justice of the Superior Court.

104 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

To all persons to whom these presents shall come, Greeting:

Know ye that among our records of our superior court for the said county of Suffolk it is thus contained, the following being the entire record in the case:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

[L. S.] To the sheriffs of our several counties or their deputies, Greeting:

We command you to attach the goods or estate of the Lippitt Woolen Co., a corporation organized under the laws of the State of Rhode Island and having a usual place of business in Providence, in said State, to the value of fifteen thousand dollars, and summon the said defendant (if it may be found in your precinct) to appear before our justices of our superior court, to be holden at Boston, within and for our said county of Suffolk, on the first Monday of May next, then and there in our said court to answer unto William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of said Providence, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Brown, Steese and Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, in an action of contract.

And the plaintiffs say that they are assignees in insolvency of the estates of Gideon P. Brown, of Boston, in said
105 county; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings within and for said county of Norfolk, and that the defendant owes the plaintiffs the sum of eleven thousand nine hundred and thirty-eight and $\frac{39}{100}$ — ($11,938.39) for goods sold to the defendant by said insolvents, an account whereof is hereto annexed, with interest thereon from the first day of November, 1889.

Account Annexed.

The Lippitt Woolen Co. to Wm. R. Dupee, Sam'l P. Colt, and Weston Lewis, assignees, Dr.

1889.			
July 12.	To 3 bales No. 2 Oregon fleece wool		$269.23
	" carting		.54
	July 12, 60 days,		
Aug. 6.	" 45 bales No. 2 Oregon fleece wool		4,214.21
	" carting		8.10
	Sept. 1, 60 days,		
" "	" 101 bags Territory fleece wool		7,269.40
	" carting		8.08
	Aug. 1, 60 days,		
" "	" 3 bags Territory fleece wool		179.17
	" carting		.38
			$11,949.11
" "	By credit allowance		10.72
			$11,938.39

106 To the damage of the said plaintiffs (as they say) the sum of fifteen thousand dollars, which shall then and there be made to appear with other due damages; and whereas the said plaintiffs say that the said defendant has not in its own hands and possession goods and estate to the value of fifteen thousand dollars aforesaid which can be come at to be attached, but has intrusted to and deposited in the hands and possession of Hiram Leonard & Co., trustee of the said defendant, goods, effects, and credits to the said value, we command you, therefore, that you summon the said supposed trustee (if he may be found in your precinct) to appear before our justices of our said court, to be holden as aforesaid, to show cause, if any he has, why execution to be issued upon such judgment as the said plaintiff may recover against the said defendant in this action (if any) should not issue against its goods, effects, or credits in the hands and possession of the said trustee.

And have you there this writ with your doings therein.

Witness Albert Mason, Esquire, at Boston, the twentieth day of April, in the year of our Lord one thousand eight hundred and ninety-one.

JOS. A. WILLARD, *Clerk.*

On which writ are the following returns by the officer who served the same:

SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

By virtue hereof I this day, at 10 minutes past one o'clock

p. m., summoned the within-named trustee, Hiram Leonard, to appear and show cause at court, as within directed, by delivering to him in hand an attested copy of this writ.

FRED H. SEAVEY,
Deputy Sheriff.

Summons & tr.....	.58
Copy.....	1.00
	1.58

107 SUFFOLK, *ss:*

BOSTON, *April 20th*, 1891.

The within-named defendant, The Lippitt Woolen Co., not being incorporated under the laws of this Commonwealth and having no place of business, officer, agent, or attorney therein known to me as such and duly accredited within my precinct, I could make no service upon it.

FRED H. SEAVEY,
Deputy Sheriff.

On said first Monday of May, A. D. 1891, the plaintiffs appeared, by C. T. Davis, Esquire, their attorney, and entered the above action, and no answer having been filed therein by the said Hiram Leonard, trustee, at the expiration of ten days from said first Monday, as required by law, a default was thereupon entered against him on the fifteenth day of said May.

And on the sixteenth day of said May the following order was entered by the court, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court, April Sitting, A. D. 1891.

William R. Dupee, of Boston, in said county of Suffolk; Samuel P. Colt, of Providence, in the State of Rhode Island, and Weston Lewis, of said Boston, as they are assignees in insolvency of the estate of Gideon P. Brown, of said Boston; Edward Steese and Amasa Clarke, both of Brookline, in our county of Norfolk, late copartners under the firm name of Browne, Steese & Clarke, insolvent debtors under proceedings in insolvency in said county of Norfolk, pl'ffs, *vs.* The Lippitt Woolen Co., a corporation organized under the laws of said State of Rhode Island and having a usual place of business in Providence, in said State, def't,
108 and Hiram Leonard, doing business and having a usual place of business in said Boston, under the name of Leonard & Co., supposed trustee.

This is an action of contract to recover fifteen thousand dollars alleged to be due to the plaintiffs from the defendant corporation on the twentieth day of April, 1891, as set forth in the plaintiffs' writ of that date.

And it appearing to the court by the suggestion of the plaintiffs and on inspection of the officer's return on the plaintiffs' writ that the defendant corporation is not of this Commonwealth nor was therein at the time of the service of said writ, and that it has no tenant, agent, or attorney in this Commonwealth known to the plaintiffs or to said officer, and that no personal service of said writ has been made upon the defendant corporation—

It is ordered by the court here that the plaintiffs give notice by serving it with a true and attested copy of this order fourteen days at least before the first Monday of June, 1891, that it may then and there appear and show cause why judgment in the above-entitled action should not be rendered against it, and that this action be continued to the next sitting of the court, and so from sitting to sitting until notice shall have been given to the defendant corporation agreeably to this order.

DANIEL W. BULLARD, *Ass't Clerk.*

And afterwards, during said sitting, to wit, on the fifth day of June, in said year, the following appearance in writing was entered, to wit:

SUFFOLK, *ss:*

Superior Court, April Sitting, 1891.

WILLIAM R. DUPEE ET AL., Pl'ff-,
v.
LIPPITT WOOLEN CO. & TR., D'f't.

109 In the above action I appear for defendant.

H. L. BOUTWELL,
209 *Washington St., Boston.*

Also on said last-named day the following was filed:

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, } *ss:*

Superior Court.

WILLIAM R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Defendant's Answer.

And now comes the defendant in the above-entitled cause and answering says that it admits the correctness of the account annexed in the plaintiffs' declaration, and that it admits indebtedness to said Brown, Steese & Clarke to the amount of $11,938.39, as therein set forth.

And this defendant, further answering, says that on the 13th day of August, 1889, at 2.18 o'clock in the afternoon, at Providence, in the State of Rhode Island, being indebted, as aforesaid, it was served

with garnishee process issuing out of the court of common pleas within and for the county of Providence and said State of Rhode Island in an action of contract, wherein one John A. Cross, of said Providence, is plaintiff and said Brown, Steese & Clarke are defendants, which action is still pending in said court, and (1889?)* in said action this defendant, on the 6th day of December, filed its answer as garnishee, admitting and setting forth its said indebtedness to said Brown, Steese & Clarke of $11,938.39, and on the 20th day of March, 1890, a verdict in said suit of Cross *vs.* Brown, Steese & Clarke & Trustees was rendered for the plaintiff in the sum of $41,534.27, and subsequently a motion in arrest of
110 judgment and interrogatories to garnishees other than this defendant were filed and said action continued *nisi* without this defendant having as yet been charged as garnishee therein or motion therefor made or judgment therefor rendered, all of which appears by the records of said court.

And this defendant is informed and believes, and therefore avers, that prior to the date of service upon it of said process in said suit of Cross *vs.* Brown, Steese and Clarke & Trustees, to wit, on August 12, 1889, this defendant being indebted as aforesaid, Edward Steese and Amasa Clarke, members of said firm of Brown, Steese and Clarke, filed a petition in the court of insolvency within and for the county of Norfolk, in this Commonwealth, praying that said firm of Brown, Steese and Clarke might be declared insolvent, publication of the notice of the filing of which petition was made on the early morning of August 23, 1889, and that on the 21st day of said August a warrant in insolvency issued from said court against the joint and several estate of said Brown, Steese and Clarke, and that on the 4th day of September, 1889, the plaintiffs were duly elected and appointed assignees in insolvency, and that the judge of said court of insolvency, by an instrument under his hand, purported to assign and convey to the plaintiffs as assignees, as aforesaid, all the estate, real and personal, of said debtors, except such as is by law exempt from attachment, and all their deeds, books, and papers relating thereto; all of which appears by the records of said court of insolvency; that said firm was composed of Gideon P. Brown, Edward Steese, and Amasa Clarke, all of whom were citizens of said Commonwealth of Massachusetts, and which firm was located and carried on business in Boston, in said Commonwealth, and had no place of business whatever elsewhere. But this defendant is advised that on the foregoing facts and by virtue of the laws of said State of Rhode Island and
111 his attachment thereunder the said Cross has a lien on said debt of this defendant to said Brown, Steese and Clarke; and this defendant is further advised, and therefore avers, that on the foregoing facts the said assignment made by the judge of the said court of insolvency, as aforesaid, could not and therefore did not transfer to and vest in the plaintiffs, as assignees, as aforesaid, the

[* In pencil in copy.]

said debt of this defendant, this defendant being a citizen and resident of said State of Rhode Island.

And this defendant, further answering, says that it owes said amount, as aforesaid, and is ready and willing to pay the same to whomsoever it lawfully may on order of court, provided and whenever it may do so without the liability of being twice compelled to pay the same debt, and further says not.

LIPPITT WOOLEN CO.,
[CORPORATE SEAL.] By CHAS. H. MERRIMAN, *Treasurer.*

And on the eighth day of said June the following was filed:

SUFFOLK, *ss:*

Superior Court, June 5, 1891.

WILLIAM R. DUPEE & ALS., Assignees,
vs.
LIPPITT WOOLEN COMPANY.

Plaintiffs' Demurrer.

And now come the plaintiffs in the above-entitled action and demur to the defendant's answer filed therein, specially assigning as cause for demurrer that the answer does not disclose a legal defence.

By their attorney, CHARLES THORNTON DAVIS.

112 And on the eighteenth day of said June said order of notice was returned into court with the following thereon:

PROVIDENCE, R. I., *May* 16, 1891.

I, Franklin B. Ham, hereby certify that I have served a true and attested copy of the within notice this day on the Lippitt Woolen Company by leaving the same in the office of said company in the hands of Charles H. Merriman, the treasurer thereof.

FRANKLIN B. HAM,
Deputy Sheriff.

Fees, 2.80.

Subscribed and sworn to, in the city of Providence, the 16th day of May, A. D. 1891, before me—

[L. S.] FRANK HEALY,
Notary Public.

Thence the same was continued to the July sitting, 1891, and at a hearing, on the seventh day of July last aforesaid, it was ordered by the court that said demurrer be overruled. Thereupon, on the fourteenth day of said July, the plaintiffs filed the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court.

WM. R. DUPEE ET ALS.
vs.
THE LIPPITT WOOLEN CO. & TR.

Plaintiffs' Motion for Rehearing and Argument on the Question of the Plaintiffs' Demurrer to the Defendant's Answer.

And now come the plaintiffs and say that at the hearing on the demurrer of the plaintiffs to the defendant's answer in the above-entitled cause counsel retained by the plaintiff-, and who was expected to take part in said argument, was absent through failure to get notice seasonably of the time set for said hearing, and that there were considerations which said counsel
113 desired to submit and of which the counsel who argued the same were not sufficiently informed and which the plaintiffs' counsel believe are of controlling weight in said case, and that the plaintiffs have reasonable cause to fear that they would be deprived of the benefit to which they should be entitled on a judgment in their favor if such judgment should be delayed for the determination of said question by the supreme court.

Wherefore the plaintiffs move this honorable court for a rehearing and argument on the question of the plaintiffs' demurrer to the defendant's answer, and that the decision overruling said demurrer may be reversed, and that judgment for the plaintiff- may be entered in said action.

CHARLES THORNTON DAVIS,
Attorney for Pl'ff-.

And afterwards, during said sitting, to wit, on the eighth day of August, in said year, after a hearing it was ordered by the court that said motion for rehearing on question of demurrer be overruled.

Thence the same was continued to the October sitting, 1891, and thence to the present January sitting, 1892.

And now, on the first day of March, 1892, the plaintiffs file the following, to wit:

SUFFOLK, *ss:*

Superior Court, Feb. 23rd, 1892.

WILLIAM R. DUPEE ET ALS.
vs.
LIPPITT WOOLEN CO.

Motion to Amend.

And now come the plaintiffs in the above-entitled action and move for leave to amend their writ and declaration therein

114 by naming as party plaintiff, in the place of these present plaintiffs, Theophilus King, of Quincy, in the county of Norfolk, and by setting in said writ the following:

"The said King having purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees of the joint and several estates of Gideon P. Brown, Edward Steese, and Amasa Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and said assignees having, under the direction and order of the court of insolvency, sold to said King all claim of said insolvents against said Lippitt Woolen Co."

And by further amending the declaration by inserting in place of the first six lines thereof the following:

"And the plaintiff says that he has purchased from William R. Dupee, Weston Lewis, and Samuel P. Colt, assignees in insolvency of the joint and several estates of Gideon P. Brown, of Boston, in the county of Suffolk; Edward Steese, of Brookline, in the county of Norfolk, and Amasa Clarke, of said Brookline, late copartners under the firm name of Brown, Steese & Clarke, under insolvency proceedings in the court of insolvency within and for said county of Norfolk, and that said assignees, under the order and direction of said court of insolvency, have sold to him all right, title, and interest of the said Dupee, Lewis, and Colt, as assignees, as aforesaid, in and to all accounts payable shown by the books of the firm of Brown, Steese and Clarke as due said firm and in and to all claims or choses in action, including the claim herein sued on, which the said insolvents had or which the said Dupee, Lewis, or Colt had, as assignees, as aforesaid, against the defendant, and that the defendant owes the plaintiff the."

By their attorney, CHARLES THORNTON DAVIS.

115 Which said amendment was allowed; and on the tenth day of said March the defendant files the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Plaintiff,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Answer to Amended Declaration.

And now comes the defendant in the above-entitled action, and for answer to the amended declaration therein filed repeats its former answer filed herein, referring to and making the same a part hereof.

By its attorney, H. L. BOUTWELL.

Also on said last-named day the plaintiffs file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Plaintiff's Replication.

And now comes Theophilus King, plaintiff in the above-entitled action, and admits and says that the matters of fact set forth in the defendant's answer are true, but denies the conclusions of law or the effect thereof therein alleged on advice. The plaintiff further says that the indebtedness of said defendant to said Brown, Steese &
Clarke was contracted on a sale or sales of wool made by said
116 firm to the defendant at the place of business of said firm, in
Boston, Massachusetts, and all of said wool was there delivered to the defendant, and payment therefor was to be made at the office of said firm, in said city of Boston.

Copies of the alleged notes sued on by said Cross in Rhode Island in the action wherein the defendant was summoned as alleged trustee are hereto annexed, marked A and B, and made a part hereof, whereby it appears and the plaintiff says that said alleged notes were made to and were payable only at the banking-house of the International Trust Company, in said Boston, which trust Co. is a corporation established under the laws of said Commonwealth and has its principal and only place of business in said Boston, and that payment of said alleged notes was secured by the pledge to said International Trust Co. of the collateral recited in each.

The plaintiff further says that said International Trust Co. held both of said alleged notes and all said collateral for more than sixty days from the dates of said notes respectively; that said firm of Brown, Steese & Clarke stopped payment on or about Sept. 5th, 1889, on the night of which day said Gideon P. Brown, because of the financial difficulties of his said firm, left said city of Boston on his way out of this country, to which he did not return for many months; that on or about Sept. 7th, 1889, the probable embarrassment of said firm had been publicly rumored and published in said Boston and brought to the notice of said trust Co., after which and on or about the same date said International Trust Co. separated each of said alleged notes from the collateral recited in them respectively, and, endorsing said alleged notes, transferred or purported to transfer the same to said Cross, who brought his said suit thereon.

117 That said International Trust Co. at the time of said alleged transfer to said Cross held many and other obligations of said firm of Brown, Steese & Clarke in the form of instruments of the same

tenor as said alleged notes, except as to dates, amounts, periods of maturity, and the recitals of collateral, but payment whereof was secured by pledges held with like alleged powers for the application of the proceeds thereof, as is set forth in said alleged notes; of all of which facts, equities, and duties arising therefrom as they then existed or might arise said Cross knew, or, the plaintiff says on information and belief, had sufficient notice to put him on such enquiry as would have discovered the same.

That said International Trust Co. has realized large sums, proceeds of said collateral to said other obligations, and from the collateral pledged with and for the payment of said alleged notes sued on by said Cross said International Trust Co. has already received over twenty-eight thousand dollars; that said International Trust Co. said *
has made proof of certain of its obligations of said firm of Brown, Steese & Clarke or alleged balances thereof to the amount of many thousands of dollars in said insolvency proceedings of said firm, and has received full dividends of said estate thereon, and that said Steese & said Clarke have received their full discharges in said proceedings from all claims provable against them or said firm in the premises.

The plaintiff further says that by the laws of the State of Rhode Island in relation to insolvent debtors (Public Statutes R. I., chap. 237, sec. 12), herein referred to and made a part hereof, it is provided that:

"Whenever the property of any debtor shall be attached or levied upon by any creditor, the debtor may at any time before such property shall be sold and the proceeds thereof applied to the payment of the claim or judgment upon which such attachment or levy
118 shall have been made, and within sixty days after such attachment or levy, dis-olve such attachment or levy by making and having recorded in the records of the town or city where the assignor resides or where any of the real estateof such debtor is located, an assignment of all the property and estate of such debtor, except so much thereof other than debts secured by bills of exchange or negotiable promissory notes as is or shall be exempt from attachment by statutes of the State and of the United States, to some citizen of the State of Rhode Island, for the equal benefit of all his creditors in proportion to their respective claims, except as is provided in sec. 14 of said chap. 237, and such assignment shall be effectual to convey all the property and estate of such debtor, except as aforesaid."

That section 14 of said chapter, also referred to and made a part hereof, is as follows:

"No assignment hereafter made for the benefit of creditors shall give to any one creditor any preference over the claims of any other creditor, except the creditor be the United States or the State of Rhode Island, or for the wages of labor performed within six months previous to such assignment, not exceeding one hundred dollars to

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[* In pencil in copy.]

any one person: Provided, however, that the expenses of executing the assignment shall first be paid out of the estate."

And the plaintiff says that also in other respects and particulars it appears in the laws and practice of said State of Rhode Island that the policy of said State and that of the Commonwealth of Massachusetts are substantially alike and in accord in securing an equal *pro rata* distribution of the estate of insolvents to and among their creditors, and in defeating and avoiding all preferences and priorities under attachment on mesne process or otherwise.

119 And the plaintiff further says that in the Constitution of the United States, article 4, section 2, it is established that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and the plaintiff, claiming the benefit of said provision in said Constitution, says that said Brown, Steese & Clarke were all of them citizens of the United States and of the Commonwealth of Massachusetts, and as such, and being insolvent, were, with all their firm and individual assets, subject to the operation of the insolvent laws of Massachusetts, and could not make valid voluntary assignments in violation thereof nor secure such assignments otherwise than by and through the proceedings instituted by them in insolvency, as aforesaid, and that neither of them was a citizen or resident of or held or owned any real estate in said State of Rhode Island; nor could they secure an assignment of their assets solely to a citizen or citizens of [Rhode Island, but the same omitted*
were assigned in said proceedings to one citizen of] said State and to two citizens of Massachusetts, which assignment was made and said trust thereof accepted prior to the expiration of sixty days from the date of the service of said trustee process on said Lippitt Woolen Co. in the case of said Cross aforesaid.

And the plaintiff, referring to said insolvency proceedings, and annexing a copy of the petition of the debtors and of the adjudication thereon, and the warrant issued thereon, and of the assignment of the assets of said insolvents to the assignees therein hereto, and making all the same a part hereof, claim- that all attachments in said suit of said Cross aforesaid were also dissolved under and by virtue of the laws of Rhode Island in said provisions thereof which secure a privilege, immunity, and tenure of property to citizens, residents, and land-owners to dissolve attachments by mesne pro-

120 cess upon and to effect an equal *pro rata* distribution of their assets by assignments to citizens of said State, which privilege, immunity, and tenure, alike of the assignor and assignee in said assignments, the plaintiff claims pertains also to the citizens of the several States under the Constitution of the United States aforesaid.

The plaintiff further says that no service was ever obtained upon said firm of Brown, Steese & Clarke or any member thereof in said suit of said Cross, nor was any appearance for them or any of them entered in said suit until after the assignment of their assets in said insolvency proceedings aforesaid. And the plaintiff, relying upon

[*In pencil in copy.]

said insolvent laws and said proceedings in insolvency in said court of insolvency as a court of record and said assignment as a judicial proceeding, also claims full benefit and protection of article 4, section 1, of the Constitution of the United States and the laws of the United States made in pursuance thereof, which article and section provide "that full faith and credit shall be given in each State to the public acts, records and judicial proceedings in every other State," and that said State of Rhode Island and the courts thereof are thereby bound to recognize said assignment, with effect to vest all the assets of said insolvents in said State in said assignees free from said alleged attachments in said suit of said Cross.

The plaintiff also pleads and relies upon article 6 of the Constitution of the United States, as follows: "This Constitution and the laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

And the plaintiff further says that by a certain contract or agreement made under the order and direction of the court of insol-
121 vency within and for the county of Norfolk the plaintiff purchased and acquired from the assignees in insolvency of said Brown, Steese & Clarke all the property and assets formerly belonging to said firm and promised and guaranteed said assignees therefor such sum as should be necessary to pay certain expenses incurred and ten per cent. upon all claim allowed by said court of insolvency in said proceedings against said insolvent estates; whereby the plaintiff acquired an active interest in and claim upon all property of said Brown, Steese & Clarke, and all claims, funds, or choses in action to them belonging or pertaining, and stands in the place of said Brown, Steese & Clarke, entitled to all rights, remedies, and defences which they could have in them or any other proceedings in this Commonwealth or by virtue of the laws thereof, or elsewhere.

And the plaintiff further says that the laws of said State of Rhode Island provide (Acts of 1884, chap. 433) that—

"Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate, under an assignment or otherwise, may on his own motion become a party to the action so far as respects the title in said personal estate.

The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant to the estate so attached, may allege and prove any facts not stated or denied by said trustee that may be material in so deciding."

And that by virtue thereof he has filed a motion in said suit brought by said Cross in Rhode Island praying that he may become a party to said action so far as respects the title to the personal estate of said Brown, Steese & Clarke in the hands of said Lippitt Woolen
Company, alleged trustee by attachment on trustee process
122 therein, and may recover and receive the same should said alleged trustee not be discharged in said process, and may be heard as to the charging of said trustee; in which motion and amend-

ments which he offers thereto he has set forth all the facts which appear in the pleadings herein, including this replication, and has given said Lippitt Woolen Co. full notice thereof, and has further set up in said motion and petition that said Cross did not begin and is not prosecuting said suit for himself as a *bona fide* domestic creditor of said Brown, Steese & Clarke in said State of Rhode Island, but colorable only, for the benefit of said International Trust Co. of Boston aforesaid.

Wherefore, for all and singular the premises and the pleadings herein, the plaintiff claims that the defendant is not chargeable as trustee in said suit by said Cross in Rhode Island if it, as in duty bound, discloses the facts of this suit and the pleadings herein set forth.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.

A.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *April 9th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the rate of 5½ per cent. per annum, having deposited with said trust company, as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

123 Business paper as follows:

H. H. Hollis, 10,000; Phœnix Woolen Co., 7,036.63.

C. A. Phelbuck, 2,500; Mackintosh, 5,000.

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARKE.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th,
124 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court, and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[L. S.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. #4867. Court of common pleas, county of Providence, State of Rhode Island. (Copy, $0.70.)

B.

(Copy of copy of note.)

$20,000. BOSTON, MASS., *May 7th*, 1889.

On demand, after date, for value received, we promise to pay to the order of the International Trust Company, at its place of business, in Boston, twenty thousand dollars, with interest at the
125 rate of 5 per cent. per annum, having deposited with said trust company as collateral security for payment of this or any other liability or liabilities of ours to said trust company due or to become due or that may be hereafter contracted, the following property, viz:

Note Atlantic, May 7, 4 mos., 10,000; endorsed, Owen Bros.
" " April 11, 5 mos., 10,000; " "

The market value of which is now $—, with the right to call for additional security should the same decline; and on failure to respond this obligation shall be deemed to be due and payable on demand, with full power and authority to sell and assign and deliver the whole of said property, or any part thereof, or any

substitutes therefor, or any additions thereto, at any broker's board or at any public or private sale, at the option of said trust company, or its president or secretary, or its or their or either of their assigns, and with the right to be purchasers themselves at such broker's board or public sale on the non-performance of this promise or the non-payment of any of the liabilities above mentioned, or at any time or times thereafter, without advertisement or notice; and after deducting all legal or other costs and expenses for collection, sale, and delivery, to apply the residue of the proceeds of such sale or sales so to be made to pay any, either, or all of said liabilities as said trust company or its president or secretary shall deem proper, returning the overplus, if any, to the undersigned.

Due —— —.

BROWN, STEESE & CLARK.

(Endorsed:) Waiving demand and notice. International Trust Co., by Jno. M. Graham, pres't. Interest paid to June 30th,
126 1889. Clerk's office, court of common pleas. Filed Mar. 22, 1890. (S'g'd) Geo. E. Webster, clerk.

A true copy of original note.
Attest:
(S'g'd) GEO. E. WEBSTER, *Clerk.*

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc.:*

CLERK'S OFFICE, COURT OF COMMON PLEAS.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of a true copy of an original note in the above-entitled case, said true copy of said original note being now on file in the files of this court and said case being now on file and pending in this court.

Witness my hand and the seal of said court of common
[L. S.] pleas, at said Providence, this 9th day of March, A. D. 1892.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Certified copy of copy of note in case John A. Cross *vs.* Brown, Steese & Clarke. #4867. Court of common pleas, county of Providence, State of Rhode Island. (Copy, $0.70.)

127 To the honorable the judge of the court of insolvency in and for the county of Norfolk, in the Commonwealth of Massachusetts:

Respectfully represent Edward Steese and Amasa Clarke, both of Brookline, in the county of Norfolk, that they and Gideon P. Brown,

of Boston, in the county of Suffolk, constitute the firm of Brown, Steese & Clarke, doing business in said Boston; that they are inhabitants of this State, and that the said Steese and Clarke have been residents of said county of Norfolk for upwards of three months next preceding the date of this petition, and that said firm and all the individual members thereof are indebted in divers sums of money, amounting in the whole to not less than two hundred dollars each, contracted while such inhabitants, which they and each of them and said firm are unable to pay in full, and they, the petitioners, wish to surrender all their joint and separate property for the benefit of their joint and separate creditors and to obtain a discharge from their said joint and separate debts, according to the statutes in this behalf provided.

Wherefore they pray that a warrant may be issued for taking possession of the joint estate of said firm and of the separate estate of its several members, and that such further proceedings may be had in the premises as the law in such cases prescribes.

Dated this tenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD STEESE.
AMASA CLARKE.

NORFOLK, *ss:*

AUG. 10, 1889.

Then personally appeared the above-named Edward Steese and Amasa Clarke and severally made solemn oath that the
128 statements contained in the foregoing petition by them subscribed are true, before me—

M. F. DICKINSON, JR.,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

DEDHAM, *August* 21, 1889.

The foregoing petition having been duly considered, and it appearing to the satisfaction of the court that the statements therein contained are true, it is ordered that a warrant thereon be issued.

GEORGE WHITE,
Judge of the Court of Insolvency.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

On the foregoing petition it is ordered that a copy of the said petition and of this order thereon be served personally on the said Gideon P. Brown, of Boston, in the county of Suffolk, or left at his last and usual place of abode forthwith, that he may appear before the court of insolvency, to be holden at Dedham, in and for said county of Norfolk, on the twenty-first day of August current, at ten

o'clock in the forenoon, then and there to show cause, if any he has, why the prayer of the said petition should not be granted.

Witness George White, Esquire, judge of said court, and the seal thereof, this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JONATHAN COBB, *Register.*

129 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

[L. S.] To the sheriff of said county of Norfolk or either of his deputies, Greeting:

You are hereby directed forthwith, as messenger, to take possession of all the joint and separate estate, real and personal, of Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, and Gideon P. Brown, of Boston, in the county of Suffolk, copartners, doing business in said Boston under the firm name of Brown, Steese and Clarke, insolvent debtors, except such as may be by law exempt from attachment, and of all their joint and separate deeds, books of account, and papers, and keep the same safely until the appointment of an assignee.

And you are also directed to publish notice twice inside in the newspaper called the Boston Daily Advertiser, printed at Boston, in the county of Suffolk, the first publication to be made forthwith, and to send written notice, by mail or otherwise, within five days after the date hereof, to said debtors and to all the creditors upon the schedule of their creditors to be furnished you by them within three days after the date hereof, which notice shall state:

First. That this warrant has issued against the estate of said debtors.

Second. That the payment of any debts and the delivery of any property belonging to said debtors to them or for their use and the transfer of any property by them are forbidden by law.

Third. That a meeting of the creditors of the debtors to prove their debts and choose one or more assignees of their estate will be held at the court of insolvency, to be holden at Dedham, in
130 said county of Norfolk, on the first Wednesday of September next, at ten o'clock in the forenoon.

And have you there this warrant with your doings thereon.

In testimony whereof I have hereunto set my hand and caused the seal of the court of insolvency to be affixed, at Dedham, this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of Court of Insolvency.

(No fees will be allowed under Nos. 4 and 5 unless specifically stated.)

Officer's Return.

NORFOLK, *ss:*

SEPTEMBER 3D, A. D. 1889.

By virtue of the within warrant, I have taken possession of all the estate of the within-named insolvent debtor-, except such as is by law exempted from attachment, and of all their deeds, books of account, and papers which have come to my knowledge; and I have published notice by advertisement on two different days, inside, in the newspapers within mentioned, the first publication of which was on the twenty-third day of August, A. D. 1889.

I also, within five days after the date of the within warrant, sent written notice, as within directed, to the within-named debtors and to the creditors named on the schedule herewith returned and delivered to me by said debtors on the twenty-third day of August, A. D. 1889; and all of said notices were according to the directions set out in said warrant.

Fees.

1.	Service of warrant	$2.00
2.	Necessary travel (at the rate of 4 cents a mile)	9.60
3.	Notice to creditors (at 10 cents each)	15.50
	4. Actual expenses in publishing notices as follows:	
131	Paid Daily Advertiser	3.00
	Postage	3.00
5.	Actual expenses in custody of property and in other services as follows:	
	Cash paid keepers, 14 days	42.00
	Custody of property, 14 days	14.00
		$91.10

HOWARD COLBURN,
Deputy Sheriff, Messenger.

NORFOLK, *ss:*

SEPT. 4, A. D. 1889.

Then personally appeared the said Howard Colburn and made oath that the above expenses returned by him under Nos. 4 and 5 have been actually incurred and paid by him and are just and reasonable, before me—

JOHN D. COBB,
Justice of the Peace.

(Endorsed:) Case No. 737. 2. Warrant in the case of Brown, Steese & Clarke, insolvent debtors. Date, August 21, 1889. Returnable 1-t Wed. Sept., 1889. First publication, August 23, 1889. True copy. Attest: John D. Cobb, assist. register.

132 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

[L. S.] Court of Insolvency.

In the case of Gideon P. Brown, of Boston, in the county of Suffolk, and Edward Steese and Amasa Clarke, both of Brookline, in said county of Norfolk, doing business in said Boston under the firm name of Brown, Steese and Clarke, copartners, insolvent debtors.

Know all men by these presents, that whereas William R. Dupee, of Newton in said Massachusetts, Samuel P. Colt, of Providence in the State of Rhode Island, and Weston Lewis of Boston in said Massachusetts, have been duly appointed assignees in said case; Now, therefore, I, George White, Esquire, judge of the court of insolvency, in and for said county of Norfolk, by virtue of the authority vested in me by the one hundred and fifty-seventh chapter of the Public Statutes and the Laws of said Commonwealth, do hereby convey and assign to the said assignees all the joint and separate estate, real and personal, of the said Gideon P. Brown, Edward Steese and Amasa Clarke, and said Brown, Steese & Clarke, copartnership, insolvent debtors, including all the property of which they were possessed, or which they were interested in or entitled to on the twenty-third day of August in the year of our Lord one thousand eight hundred and eighty-nine, excepting such as may be by law exempted from attachment, with all their joint & separate deeds, books and papers relating thereto.

To have and to hold, all the above-granted premises to the said Wm. R. Dupee, Sam'l P. Colt and Weston Lewis, assignees, as aforesaid, and their heirs, forever; in trust nevertheless for the uses and purposes, with the powers and subject to the conditions and limitations set forth in the chapter and laws aforesaid.

133 In witness whereof, I, the said judge, have hereunto set my hand, and caused the seal of said court to be affixed, on this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

GEORGE WHITE,
Judge of the Court of Insolvency.

And also on said last-named day the parties file the following, to wit:

COMMONWEALTH OF MASSACHUSETTS, *Suffolk,* } *ss:*

Superior Court, March, 1892.

THEOPHILUS KING (by Amendment), Pl'ff,
vs.
THE LIPPITT WOOLEN CO., D'f't.

Agreed Statement of Facts.

In the above action it is agreed, upon information and belief and for the purposes of this suit, that the facts as stated and not denied in the pleadings herein are true, except that conclusions and inferences of law or effects thereof as stated on advice are not admitted.

It is further agreed that the statutes of said State of Rhode Island with regard to trustee process are as follows:

Public Statutes of Rhode Island.

CHAP. 207, SEC. 22. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands of any person, copartnership or corporation as trustee, it shall be served by leaving an attested copy thereof, having endorsed thereon the date and the time of day of
134 such service, with the person or some member of the copartnership named in such writ as trustee, or if such trustee or the corporation whose shares shall be directed to be attached shall be a bank, with the cashier thereof, if an insurance company, with the president or secretary thereof, and if any other corporation, it shall be served by leaving an attested copy thereof at the manufactory where the person is employed whose wages are to be trusteed or at the usual place where the payment of said wages is made, upon the treasurer thereof or the person executing the duties of treasurer thereof or the agent or superintendent thereof, or at the office of such corporation with some person there employed, and such officer shall also leave an attested copy of such writ so endorsed with the defendant or at his last and usual place of abode, or if he have none within the precinct of such officer, the latter shall send such copy to the defendant by mail, if his address is known to or can be ascertained by such officer.

CHAP. 212, SEC. 5. In case any action commenced by attachment of real estate or by foreign attachment shall not be answered, and the defendant shall not return into this State before the return of the writ, the court shall continue the action one term, and the defendant shall have a right to answer the same six days previous to the term to which such action shall be continued, or may be permitted to answer the same on the first or second day of said term in like manner as is provided in the preceding section.

SEC. 4. The defendant in a civil action appealed from the judg-

ment of a justice court may file any plea or answer therein other than a plea of abatement on or before the second day of the term of the court at which such appeal is entered.

CHAP. 208, SEC. 1. In all attachments of real estate, or of goods and chattels, or of personal estate in the hands of a trustee, or
135 of stock or shares in any banking association or other incorporated company, he who shall first procure any such attachment to be made for any just debt or damages shall be entitled to have his debt or damages satisfied before any other demand for which the same shall be attached or taken by execution at the suit of any other person, and all others in order of attachment.

SEC. 9. Whenever any banking association or incorporated company shall be served with a copy of a writ attaching its stock or shares, if a bank, the cashier thereof, if an insurance company, the president or secretary thereof, and if any other corporation, the treasurer thereof or person executing the duties of treasurer, shall render an account upon oath to the court to which such writ shall be returnable of what stock or shares the defendant had in such company at the time of the serving such writ.

SEC. 10. The person, member of the copartnership or officer of the corporation with whom a copy of the writ shall have been left for the purpose of attaching the person- estate of the defendant in the hands or possession of such person, copartnership or corporation, as trustee, shall render an account, in writing, upon oath, to the court to which such writ is returnable, of what estate such person, copartnership or corporation had in his hands or possession at the time such writ was served if any, or if he had none either directly or indirectly, shall return such fact in writing, under oath, to such court.

SEC. 11. The disclosure made by virtue of either of the two preceding sections shall be sworn to before any person authorized to administer oaths and shall be filed with the clerk of the court, if there be a clerk, otherwise with the court to which such writ shall be returnable.

SEC. 12. Either party may examine the person so making oath, upon written interrogatories, to be filed with such clerk, or
136 court, if there be no clerk, and such person, after having been furnished with a copy of such interrogatories, shall answer the same responsively in writing under oath administered as aforesaid, and shall return the answer to such clerk, or to such court, if there be no clerk, at such time as such court shall by general rule or by special order in such case direct.

SEC. 13. If it shall appear by the disclosure of the person making such oath that the person, copartnership or corporation served with a copy of such writ had at the time of service thereof any of the personal estate of the defendant in his or their hands, then and in such case the plaintiff, after having recovered judgment against such defendant, may bring his action against such person, copartnership or corporation to recover so much as will satisfy such judgment, with interest and costs, if there shall appear by such disclosure to be a sufficiency for the same, otherwise for so much as shall appear by the same to be in his hands.

SEC. 14. Whenever it shall appear that several persons, copartnerships or corporations had property of the defendant as such trustee, the plaintiff may sue each separately and recover the amount in his hands until such plaintiff shall receive full payment of his judgment against the original defendant, with interest and costs.

SEC. 15. Any trustee, after final judgment against the defendant, may satisfy such judgment or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor, and such payment shall avail for his discharge, as against both plaintiff and defendant, for the amount thereof.

SEC. 16. If it shall appear by the disclosure that the personal estate in the hands of the trustee belonging to the defendant did not consist of money, but of one or more specific articles, such trustee may, after final judgment shall have been rendered against
137 the defendant, surrender or deliver to the officer charged with the execution issued on such judgment such specific articles, that the same may be taken on such execution.

SEC. 17. Such surrender or delivery shall be a good discharge to the trustee for such articles, as to both plaintiff and defendant in the action.

SEC. 18. If any person, copartnership or corporation, after being served as trustee with a copy of any writ, and after having been tendered at the time of such service, two dollars and his travelling fees as a witness in the supreme court or court of common pleas, and one dollar and like travelling fees in any other court, shall refuse or neglect to render such an account on oath as aforesaid, of what personal estate of the defendant he had in his hands at the time of the service of such copy, such trustee shall be liable to satisfy the judgment that the plaintiff shall obtain against the defendant in such writ, to be recovered by action on the case, except as provided in section twenty-two, chapter two hundred twenty-two.

SEC. 19. If several trustees shall neglect or refuse to render an account upon oath in the same case, then the plaintiff shall bring his action against all such trustees jointly, and in no other manner.

SEC. 20. Every person who shall be served with such copy of a writ against any defendant may file an answer to such action and defend the suit in behalf and in the name of the defendant.

SEC. 21. If it shall appear by such disclosure that the person, copartnership or corporation who had been served as trustee with a copy of such writ had not any of the personal estate of the defendant in his hands, then such action shall be dismissed and the person who shall appear to defend the same shall recover his costs, unless the writ has been duly served on the defendant.

138 SEC. 22. Every person, copartnership or corporation served with a copy of a writ for attaching the estate of another in their hands shall be paid all lawful costs and charges which they shall incur in consequence of their being served with such writ of attachment by the person who brings the action, and so much of such charge as shall be judged reasonable by the court before whom the cause shall be pending shall be allowed in the bill of costs.

SEC. 23. The word trustee, wherever occurring in this title, shall be deemed to include the words attorney, agent, factor and debtor.

CHAP. 213, SEC. 10. Whenever any person shall be served with a copy of a writ by which he shall be sought to be charged as trustee of the defendant named therein and such person shall appear and answer to the action so commenced as to whether he is or is not a trustee of the defendant, the court in which such action is brought or may be pending shall determine whether the person so served is properly chargeable as the trustee of the defendant, and if chargeable, to what extent.

SEC. 11. Any person summoned as trustee of a defendant making a false answer or affidavit in any case or in any affidavit required of him or which he may take in any action, shall be liable to the plaintiff, in an action of the case, for any damages which may result to him from such false answer or affidavit.

CHAP. 222, SEC. 21. In every execution issued against any defendant in an action in which another person shall have been charged, as the trustee of such defendant, under the provisions of section ten of chapter two hundred thirteen, or by the default of the person served with a copy of the plaintiff's writ for the purpose of charging him as the trustee of the defendant to appear and file his affidavit therein, there shall be inserted next after the words
139 "goods and chattels or real estate of the defendant," the words following, namely, "and the personal estate of the said defendant, in the hands and possession of (here insert the name of the trustee,) charged as trustee of the said defendant to the extent of (here insert the amount for which the trustee is charged)," or if the trustee shall be charged by his default in not filing the necessary affidavit in said cause, insert in lieu of the clause fixing the extent to which such trustee shall be charged, the following, after the word defendant, namely, "by the default of the said trustee to file his affidavit in said action."

SEC. 22. If any person named as the trustee of a defendant in any execution, who shall have had a judgment that he be charged as trustee rendered against him by default, shall make affidavit as to whether or not he had personal property of the defendant in his hands or possession at the time of the service of the original writ in said action upon him and stating the amount, if any, so in his hands, and that he failed to file an affidavit therein before he was charged by the court as the trustee of the defendant, either from want of actual notice of the service of the said writ, or by accident or mistake, and shall give such affidavit to the officer charged with the service of said execution, the officer shall annex such affidavit to his return to the said execution, and if the trustee shall pay to the said officer the money paid for his attendance at the time of the service of the original writ, and another like sum, together with the sum stated in his affidavit to be so in his hands, if any, no further proceedings shall be had therein against such trustee, except as is provided in section eleven of chapter two hundred thirteen, and the officer shall pay the money paid to him by such trustee to the plaintiff.

140 *Acts of* 1884.

CHAP. 433, SEC. 1. Whenever the personal estate of any defendant is attached on trustee process, any person claiming said personal estate under an assignment or otherwise, may, on his own motion, become a party to the action so far as respects the title to said personal estate.

SEC. 2. The answer sworn to by a trustee shall be considered true in deciding how far said trustee is chargeable, but either party to the suit, or any claimant of the estate so attached, may allege and prove any facts not stated nor denied by said trustee that may be material in so deciding.

SEC. 3. Any question of fact arising upon such additional allegations may be tried and determined by the court or justice and in the court of common pleas and in the supreme court the same may be submitted to a jury in such manner as the court shall direct.

Acts of January, 1889.

CHAP. 752, SEC. 1. Whenever a writ shall command the attachment of the shares of the defendant in any corporation or of his personal estate in the hands or possession of any person, copartnership or corporation as trustee, the defendant may at any time after the service of such writ upon such trustee and before final judgment deliver to the officer who served such writ a bond in the penal sum of the amount of damages laid in the writ signed by the defendant or some one in his behalf, with sureties to the satisfaction of such officer with a condition therein that the same shall be null and void, if the final judgment in the action in which such writ was served shall be forthwith paid and satisfied after the rendition thereof.

141 SEC. 2. Upon the acceptance of such bond by such officer he shall forthwith deliver to the person, copartnership or corporation named as trustee in such writ a certified copy of the writ, with an endorsement thereon signed by said officer setting forth therein that he has accepted such bond and released the shares or personal estate in the hands or possession of such trustee from such attachment, and thereupon the shares or personal estate in the hands or possession of such trustee shall become discharged from such attachment.

SEC. 3. In case such writ shall have been returned to the court to which it is made returnable and duly entered therein, or in case the officer who served such writ shall from any cause be unable to perform the duties mentioned in section 2 of this act, then such bond shall be delivered to the clerk of the court to which such writ is made returnable, if there be a clerk, but if there be no clerk then to the justice thereof, and such clerk or justice shall proceed in the manner provided in sections 1 and 2 of this act.

SEC. 4. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect from and after its passage.

CHARLES THORNTON DAVIS,
Pl'ff's Att'y.
H. L. BOUTWELL, *Att'y for Def't.*

Thereupon said agreed facts being presented to the court and seen and understood, on the twenty-third day of March, A. D. 1892, judgment is ordered thereon for the plaintiff.

Whereupon, on the twenty-fourth day of March, 1892, the following is filed:

SUFFOLK, *ss:*

Superior Court, Mar. 23, 1892.

142 WILLIAM R. DUPEE ET ALi. (THEOPHILUS KING, by Amendment), Plaintiffs,
vs.
THE LIPPITT WOOLEN CO., Defendant.

Agreement.

In the above-entitled action, in accordance with the direction of the court in ordering judgment that execution be stayed and the parties plaintiff and defendant file an agreement therefor, it is hereby agreed that execution shall not issue until all proceedings in the action referred to in the pleadings herein of John A. Cross *vs.* Brown, Steese & Clarke, now pending in the court of common pleas, in the county of Providence and State of Rhode Island and Providence Plantations, wherein this defendant has been summoned as alleged trustee, shall be finally determined.

CHARLES THORNTON DAVIS,
Att'y for Pl'ff.
H. L. BOUTWELL, *Att'y for Def't.*

All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our said superior court to be hereto affixed.

Witness Albert Mason, Esquire, chief justice of our superior
[L. S.] court, at Boston, in said county of Suffolk, this second day of March, in the year of our Lord one thousand eight hundred and ninety-three.

(S'g'd) JOS. A. WILLARD, *Clerk.*

143 (*Copy of Rescript as to Theophilus King's Becoming a Party as to the Question of Title to Certain Trusteed Property. Filed October* 3, 1893.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

ROGERS, *J.:*

The rescript entered in this case March 6, 1893, entitled "Rescript *In re* Theophilus King's motion to intervene," is withdrawn, and

said King, claimant of the personal estate attached as the property of the defendants on trustee process in the hands of the Wauskuck Co. and of the Lippitt Woolen Co., has leave to become a party to the above-entitled cause as far as respects the title to said personal estate.

144 (*Copy of Exhibit B. Filed May* 7, 1892.)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss.*:

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this fourth day of May, in the year of our Lord eighteen hundred and ninety-two.

(S'g'd) GEORGE WHITE,
Judge of the Court of Insolvency.

145 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss.*:

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court, viz., petition for leave to sell assets of Brown, Steese & Clarke to Theophilus King, together with order of court allowing said petition.

In witness whereof I have hereunto set my hand and the seal of said court this fourth day of May, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

146 Whereas, William R. Dupee, Samuel P. Colt and Weston Lewis, assignees in insolvency of the firm of Brown, Steese and Clarke hold certain property and assets formerly belonging to said firm, and being all of the assets of said firm now in their hands and possession which are known to them and of which a schedule is hereto annexed; and

Whereas, a large portion of said assets consists of claims, the amount or validity of which is in dispute and in regard to which litigation is now pending or will be necessary or probable in order

to realize the value thereof for the benefit of the said insolvent estate; and

Whereas, Theophilus King is ready and has offered to buy said assets a schedule of which is hereto annexed as aforesaid, and said assignees are ready and willing with the approval of the court to sell the same to him upon the terms and for the consideration hereinafter named;

Now, therefore, in consideration of the premises and other sufficient consideration, it is agreed by and between the parties hereto, subject to the approval of the court, as follows:

I. Said King agrees to buy and said assignees agree to sell to him all their right, title and interest in and to the assets set forth in said schedule hereto annexed being all the assets of the insolvent estate of said firm known to and not yet disposed of by said assignees.

Said King agrees to pay for said assets such sum of money as together with the amount already paid out by said assignees as dividends upon claims proved and allowed by the judge of the court of insolvency for Norfolk county, shall equal ten per cent. of the amount of all claims heretofore and hereafter finally allowed by said court against the said insolvent estate, and in addition thereto

147 the amounts charged by the said assignees as compensation for themselves and the counsel employed by them in the management of said estate in the account filed by them in the said court of insolvency on the — day of ——, 1890.

Payment of said purchase price shall be made as follows:

— dollars within thirty days from the approval of this contract by said court and the remainder in such amounts and at such time or times as shall enable said assignees to pay to the creditors whose claims shall be hereafter finally allowed a dividend of ten per cent. upon their respective claims as allowed by the court.

Provided however, and it is agreed that if said King or his legal representatives shall receive from the assets to be transferred to him as aforesaid as proceeds thereof after deducting all payments in or for and all reasonable expenses of collection, compromise, disposition, adjustment, prosecution and defence of the assets and litigation herein transferred to him or his possession or control, herein including all reasonable outlay and charges for the aid and services of others than himself, a sum equal to the amount or amounts paid by him to the assignees as aforesaid with interest thereon at the rate of — per cent. per annum from the several dates of payment thereof, he shall account for and pay over as and when received the surplus of said net proceeds to said assignees for the benefit of the said insolvent estate, except that said King shall in no event be called upon or obliged to account for more than sixty-eight thousand dollars on account of the claims now outstanding of said assignees against the Riverside and Oswego mills or the trustees for the benefit of creditors thereof or Bullens and Sawyer trustees, under or by virtue of a certain agreement between said assignees of Brown, Steese & Clarke, said trustees for creditors of the Riverside and Oswego mills

and said Bullens and Sawyer trustees dated —— —, 1890, so
148 far as said contract pertains to the wool in Providence attached as the property of the firm of Brown, Steese & Clarke and not to the affairs of Gideon P. Brown individually, it being understood that the draft of twenty-five thousand dollars ($25,000) mentioned in said contract, the application of which was therein left optional to the said assignees of Brown, Steese & Clarke shall now be finally allowed as belonging to and in reduction of the amount due said Brown individually from said Riverside and Oswego mills at the time of the failure of said mills.

It is further agreed that upon request of the said assignees at any time after the said King has received from the net proceeds of the assets to be transferred to him as aforesaid the purchase price paid by him and interest as hereinbefore set forth and payments, expenses and charges as aforesaid he shall retransfer and convey unto said assignees of Brown, Steese & Clarke or their successors in the trust for the benefit of said insolvent estate, all of the said assets then undisposed of by him except that he shall pay to the said assignees the sum of sixty-eight thousand dollars ($68,000) instead of transferring to them said claim under said Riverside and Oswego mills contract in case he shall not have previously have accounted for the same without any other or further consideration therefor.

It is further understood and agreed that prior to any such retransfer said King shall have the entire management and control of the assets transferred to him, and may reduce the same to money, collect, sue for, recover, or otherwise acquit, compromise and dispose of the same in such manner and upon such terms as he shall see fit, but he shall keep an accurate account of all expenses incurred in the collection, recovery and disposal of said assets and of the amounts received by him, which shall at all times be open to the inspection
of the said assignees of Brown, Steese & Clarke and their legal
149 representatives, and said King covenants and agrees to use his best skill, efforts and endeavors to realize as much as possible from said assets and all of them either by compromise or otherwise, as he shall deem most advisable, it being understood and agreed that he may use the names of the said assignees in any way necessary or proper for the collection and recovery of said claims or any of them, but without expense to them and they agree to take all proper and lawful action which he may request and at his expense to aid him in the accomplishment of the purposes hereof; and

Whereas, there are now pending certain suits a schedule of which is hereto annexed, in which said assignees of Brown, Steese & Clarke are parties either defendant or plaintiff, now it is agreed that said suits or any of them shall be disposed of in the manner and upon the terms desired by said King, but said King shall assume and pay all costs, if any, which may be taxed upon the said assignees of Brown, Steese & Clarke in the final disposition of said suits or any of them and shall also pay all counsel and attorney's fees hereafter incurred in the conduct and management of said suits or any of them until the rights and claims forming the subject-matter of said

suits shall, if at all, be retransferred to said assignees or their successors in said trust as hereinbefore provided.

It is further understood that the transfer of said assets is to be without warranty express or implied on the part of said assignees, nor shall this agreement be construed as selling any assets of said firm, if any, not now known to said assignees nor any assets of the estates of the individual partners of said firm all of which are expressly excepted from the terms of this agreement.

150 Witness the hands and seals of the parties hereto this — day of ——, eighteen hundred and ninety.

(Signed) THEOPHILUS KING. [SEAL.]

151 *List of Assets Referred to Within.*

1. Cash in bank (which is to be retained by assignees as part payment of purchase price) over and above amount reserved for expenses per agreement.
2. All accounts payable shown by the books of the firm of Brown, Steese & Clarke as due said firm.
3. Interest in contract with assignees of Riverside and Oswego mills as far as it pertains to the firm of Brown, Steese & Clarke, but not further and not as to the matter of G. P. Brown.
4. Interest in wool in Providence.
5. Interest in wool sent to Mass. Loan & Trust Co. from Providence August 5, '89.
6. All claim upon and interest in wool and proceeds claimed by the Sturtevant estate, and all benefit of any surrender of claims or dividends by said estate against the firm of Brown, Steese & Clarke, but no dividend shall ever be paid or received thereon by anybody.
7. Claim against Atlantic mills.
8. Claim against Wauskuck Co.
9. Claim against Lippitt Woolen Co.
10. Claim against Phœnix Woolen Co.
11. All benefit arising or growing out of the suits or any of them set forth in Schedule "B."

152 *List of Suits In re Matters of Brown, Steese & Clarke.*

1. Sturtevant *et ali.*, exsrs., *v.* H. H. Hollis *et als.*
2. Sturtevant *et ali.*, exsrs., *vs.* J. H. Russell *et als.*
   Bills in eq., supreme judicial court, Suffolk Co.

3. Mass. Loan & Trust Co. *vs.* Seavy.
   Replevin superior court, Suffolk Co.

4. Wm. R. Dupee *et ali.*, assignees, *vs.* International Trust Co.
5. Do. do. do. do. Metropolitan Nat'l Bank.
6. Do. do. do. do. Mass. Loan and Trust Co.
7. Do. do. do. do. Hollis Dressed M.& W. Co.

   Bills in equity, supreme judicial court, Suffolk Co.

8. Mass. Loan & Trust Co. *vs.* Brown, Steese & Clarke.
9. John A. Cross *vs.* do. do.
10. Industrial Trust Co *vs.* do. do.
11. Metropolitan Nat'l Bank *vs.* do. do.
12. Hollis D. H. & W. Co. *vs.* do. do.
13. Washington Nat'l Bank *vs.* do. do.
14. Phœnix Nat'l Bank *vs.* do. do.

Suits in Rhode Island, with attachments.

15. S. A. Maxfield *vs.* Brown, Steese & Clarke.
Suit in Maine, with attachment.

153 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

Court of Insolvency.

In the Matter of BROWN, STEESE & CLARKE, Insolvent Debtors.

To the honorable the judge of probate and insolvency within and for the county of Norfolk:

Respectfully represent unto your honor William R. Dupee, Samuel P. Colt, and Weston Lewis that they are assignees in insolvency of said firm, and that they are now engaged in the performance of their duties as such assignees; that the assets of said firm remaining in their hands and undisposed of consist very largely of claims in dispute, to determine which much time and litigation will be necessary, during which time they will be unable to make a further dividend to the creditors of said firm; that they have received an offer from one Theophilus King for the purchase of the assets of said firm remaining in the hands undisposed of, so far as they are known to your petitioners, upon the terms set forth in the draft of agreement hereto annexed, which offer they believe it for the best interests of the creditors of said firm to accept. Wherefore they pray that they may be authorized and empowered to make said sale, according to the terms of said draft of agreement, and to sign said agreement and to transfer and deliver said assets upon the terms thereof.

(Signed) WM. R. DUPEE,
(Signed) SAM'L P. COLT,
WESTON LEWIS,
By H. G. NICHOLS, *Att'y.*

154 We, the undersigned, creditors of said firm of Brown, Steese and Clarke, whose claims have been allowed by the court of insolvency for Norfolk county in the amounts set against our respective names, hereby approve of the foregoing petition and request that the prayer thereof may be granted.

Names. Amount.

And endorsed on the back: Nov. 19, '90. Allowed. G. W.

155 (*Copy of Exhibit D. Filed May* 7, 1892.)

Whereas, William R. Dupee, Samuel P. Colt and Weston Lewis, assignees in insolvency of the firm of Brown, Steese and Clarke, hold certain property and assets formerly belonging to said firm, and being all of the assets of said firm now in their hands and possession which are known to them and of which a schedule is hereto annexed;

And whereas, a large portion of said assets consists of claims, the amount or validity of which is in dispute and in regard to which litigation is now pending or will be necessary or probable in order to realize the value thereof for the benefit of the said insolvent estate;

And whereas, Theophilus King is ready and has offered to buy said assets a schedule of which is hereto annexed as aforesaid, and said assignees are ready and willing with the approval of the court to sell the same to him upon the terms and for the consideration hereinafter named;

Now, therefore, in consideration of the premises and other sufficient consideration, it is agreed by and between the parties hereto, subject to the approval of the court, as follows:

1. Said King agrees to buy and said assignees agree to sell to him all their right, title and interest in and to the assets set forth in said schedule hereto annexed being all the assets of the insolvent estate of said firm known to and not yet disposed of by said assignees.

Said King agrees to pay for said assets such sum of money as together with the amount already paid out by said assignees as dividends upon claims proved and allowed by the judge of the court of insolvency for Norfolk county, shall equal ten per cent. of the amount of all claims heretofore and hereafter finally allowed by said court against the said insolvent estate, and in addition thereto the amounts charged by the said assignees as compensation for

156 themselves and the counsel employed by them in the management of said estate in the account filed by them in the said court of insolvency on the — day of ——, 1890.

Payment of said purchase price shall be made as follows: ($164,186.12) one hundred & sixty-four thousand one hundred and eighty-six $\frac{12}{100}$ dollars within thirty days from the approval of this contract by said court and the remainder in such amounts and at such time or times as shall enable said assignees to pay to the creditors whose claims shall be hereafter finally allowed a dividend of ten per cent. upon their respective claims as allowed by the court.

Provided however, and it is agreed that if said King or his legal representatives shall receive from the assets to be transferred to him as aforesaid as proceeds thereof after deducting all payments in or for and all reasonable expenses of collection, compromise, disposition, adjustment, prosecution and defence of the assets and litigation herein transferred to him or his possession or control, herein including all reasonable outlay and charges for the aid and serv-

ices of others than himself, a sum equal to the amount or amounts paid by him to the assignees as aforesaid with interest thereon at the rate of — per cent. per annum from the several dates of payment thereof, he shall account for and pay over as and when received the surplus of said net proceeds to said assignees for the benefit of the said insolvent estate, except that said King shall in no event be called upon or obliged to account for more than sixty-eight thousand dollars on account of the claims now outstanding of said assignees against the Riverside and Oswego mills or the trustees for the benefit of creditors thereof or Bullens and Sawyer trustees, under or by virtue of a certain agreement between said assignees of Brown, Steese & Clarke, said trustees for creditors of the Riverside and Oswego mills and said Bullens and Sawyer trustees dated —— —, 1890, so far as said contract pertains to the
157 wool in Providence attached as the property of the firm of Brown, Steese & Clarke and not to the affairs of Gideon P. Brown individually, it being understood that the draft of twenty-five thousand dollars ($25,000) mentioned in said contract, the application of which was therein left optional to the said assignees of Brown, Steese & Clarke shall now be finally allowed as belonging to and in reduction of the amount due said Brown individually from said Riverside and Oswego mills at the time of the failure of said mills.

It is further agreed that upon request of the said assignees at any time after the said King has received from the net proceeds of the assets to be transferred to him as aforesaid the purchase price paid by him and interest as hereinbefore set forth and payments, expenses and charges as aforesaid he shall retransfer and convey unto said assignees of Brown, Steese & Clarke or their successors in the trust for the benefit of said insolvent estate, all of the said assets then undisposed of by him except that he shall pay to the said assignees the sum of sixty-eight thousand dollars ($68,000) instead of transferring to them said claim under said Riverside and Oswego mills contract in case he shall not have previously have accounted for the same without any other or further consideration therefor.

It is further understood and agreed that prior to any such retransfer said King shall have the entire management and control of the assets transferred to him, and may reduce the same to money, collect, sue for, recover, or otherwise acquit, compromise and dispose of the same in such manner and upon such terms as he shall see fit, but he shall keep an accurate account of all expenses incurred in the collection, recovery and disposal of said assets and of the amounts received by him, which shall at all times be open to the inspection of the said assignees of Brown, Steese & Clarke
158 and their legal representatives, and said King covenants and agrees to use his best skill, efforts and endeavors to realize as much as possible from said assets and all of them either by compromise or otherwise, as he shall deem most advisable, it being understood and agreed that he may use the names of the said assignees in any way necessary or proper for the collection and recovery of said claims or any of them, but without expense to them and

they agree to take all proper and lawful action which he may request and at his expense to aid him in the accomplishment of the purposes hereof;

And whereas, there are now pending certain suits a schedule of which is hereto annexed, in which said assignees of Brown, Steese & Clarke are parties either defendant or plaintiff, now it is agreed that said suits or any of them shall be disposed of in the manner and upon the terms desired by said King, but said King shall assume and pay all costs, if any, which may be taxed upon the said assignees of Brown, Steese & Clarke in the final disposition of said suits or any of them and shall also pay all counsel and attorney's fees hereafter incurred in the conduct and management of said suits or any of them until the rights and claims forming the subject-matter of said suits shall, if at all, be retransferred to said assignees or their successors in said trust as hereinbefore provided.

It is further understood that the transfer of said assets is to be without warranty express or implied on the part of said assignees, nor shall this agreement be construed as selling any assets of said firm, if any, not now known to said assignees nor any assets of the estates of the individual partners of said firm all of which are expressly excepted from the terms of this agreement.

159 Witness the hands and seals of the parties hereto this nineteenth day of November, eighteen hundred and ninety.

(Signed) THEOPHILUS KING, [SEAL.]
(Signed) WM. R. DUPEE, [SEAL.]
(Signed) WESTON LEWIS, [SEAL.]
(Signed) SAM'L P. COLT, [SEAL.]

Assignees of Brown, Steese & Clarke, Insolvent Debtors.

160 *List of Suits In re Matters of Brown, Steese & Clarke.*

1. Sturtevant *et ali.*, exsrs., *v.* H. H. Hollis *et als.*
2. Sturtevant *et ali.*, exsrs, *vs.* J. H. Russell *et al.*
   Bills in eq., supreme judicial court, Suffolk Co.
3. Mass. Loan & Trust Co. *vs.* Seavy.
   Replevin, superior court, Suffolk Co.
4. Wm. R. Dupee *et ali.*, assignees, *vs.* International Trust Co.
5. Do. do. do. do. Metropolitan Nat'l Bank.
6. Do. do. do. do. Mass. Loan and Trust Co.
7. Do. do. do. do. Hollis Dressed M. & W. Co.
   Bills in equity, supreme judicial court, Suffolk Co.
8. Mass. Loan & Trust Co. *vs.* Brown, Steese & Clarke.
9. John A. Cross *vs.* do. do.
10. Industrial Trust Co. *vs.* do. do.
11. Metropolitan Nat'l Bank *vs.* do. do.
12. Hollis D. M. & W. Co. *vs.* do. do.
13. Washington Nat'l Bank *vs.* do. do.
14. Phœnix Nat'l Bank *vs.* do. do.
    Suits in Rhode Island, with attachments.
15. S. A. Maxfield *vs.* Brown, Steese & Clarke.
    Suit in Maine, with attachment.

161 *List of Assets Referred to Within.*

1. Cash in bank (which is to be retained by assignees as part payment of purchase price) over and above amount reserved for expenses per agreement.
2. All accounts payable shown by the books of the firm of Brown, Steese & Clarke as due said firm.
3. Interest in contract with assignees of Riverside and Oswego mills, as far as it pertains to the firm of Brown, Steese & Clarke, but not further and not as to the matter of G. P. Brown.
4. Interest in wool in Providence.
5. Interest in wool sent to Mass. Loan & Trust Co. from Providence August 5, '89.
6. All claim upon and interest in wool and proceeds claimed by the Sturtevant estate, and all benefit of any surrender of claims or dividends by said estate against the firm of Brown, Steese & Clarke, but no dividend shall ever be paid or received thereon by anybody.
7. Claim against Atlantic mills.
8. Claim against Wanskuck Co.
9. Claim against Lippitt Woolen Co.
10. Claim against Phœnix Woolen Co.
11. All benefit arising or growing out of the suits or any of them set forth in Schedule "B."

162 (*Copy of Exhibit E.*)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

Court of Insolvency.

I, George White, Esquire, judge of the court of insolvency within and for the county of Norfolk, hereby certify that Jonathan Cobb, whose signature is affixed to the annexed certificate and attestation, is the register and proper certifying officer of said court and has by law the custody of the seal and all the records, books, documents, and papers of or appertaining to said court, and that said certificate and attestation are in due form and entitled to full faith and credit.

In witness whereof I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord eighteen hundred and ninety-two.

(S'g'd) GEORGE WHITE,
[L. S.] *Judge of the Court of Insolvency.*

163 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

[L. S.] Court of Insolvency.

I, Jonathan Cobb, register of the court of insolvency for said county of Norfolk, having by law the custody of the seal and all the

records, books, documents, and papers of or appertaining to said court, hereby certify the papers hereto annexed to be true copies of papers appertaining to said court on file and of record in the office of said court.

In witness whereof I have hereunto set my hand and the seal of said court this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and ninety-two.

[L. S.] (S'g'd) JONATHAN COBB, *Register.*

164 COMMONWEALTH OF MASSACHUSETTS, } ss:
Norfolk, }

Court of Insolvency.

In the Case of BROWN, STEESE & CLARK, Insolvent Debtors.

I, John M. Graham, president of the International Trust Company, a corporation duly established by law and having its usual place of business at Boston, State of Massachusetts, hereto duly authorized by said corporation, do swear that said Brown, Steese and Clark, by whom proceedings in insolvency have been instituted, at and before the date of such proceedings were and still are, according to statement and memo. hereto annexed, justly and truly indebted to our said corporation in the sum of thirty-six thousand two hundred eight & $\frac{81}{100}$ dollars ($36,208.81), for which sum or any part thereof I have not nor has any other person, to the use of said corporation, to my knowledge or belief, received any security or satisfaction whatever beyond what has been disposed of agreeably to law.

And I do further swear that, to the best of my knowledge and belief, the said claim was not procured by said corporation for the purpose of influencing the proceedings in this case.

And I do further swear that I have not and, to the best of my knowledge and belief, said corporation has not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of said corporation's claim or any part of its claim against said debtor, nor have I nor has said corporation, to the best of my knowledge and belief, directly or indirectly, received or taken or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever to myself or to any person or persons to said corporation's use or benefit under or with any understanding or
165 agreement, express or implied, whereby said corporation's vote for assignees or its assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

JNO. M. GRAHAM,
Pres't International Trust Co.

SUFFOLK, ss:

MAY 29, 1890.

Then personally appeared the above-named John M. Graham and made solemn oath that the foregoing declaration by him subscribed is true, before me—

R. M. MORSE, JR.,
Justice of the Peace.

166	Note Phœnix Woolen Co., due Sept. 11, '89	$4,876.91	
	Prot. fee	2.04	
		4,878.95	
	End. Brown, Steese & Clark, less int. to Aug. 21, '89	17.09	
			$4,861.86
	Note Phœnix Woolen Co., due Oct. 21, '89	5,062.41	
	Prot. fee	2.02	
		$5,064.43	
	End. Brown, Steese & Clark, less int.	50.62	
			5,013.81
"	Phœnix Woolen Co., due Oct. 22, '89	$5,015.99	
		2.02	
		5,018.01	
	End. Brown, Steese & Clark, less int.	50.98	
			4,967.03
	Accept. Brown, Steese & Clark, due Sept. 30th.	5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor H. H. Hollis, end. G. P. Brown, less int.	32.50	
			4,969.54
"	Brown, Steese & Clark, due Nov. 5	$5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor H. H. Hollis, end. G. P. Brown, less int.	62.50	
			4,939.54
"	Brown, Steese & Clark, due Nov. 5	$5,000	
	Prot. fee	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int.	62.50	
			4,939.54

Note J. S. Brown, due Oct. 18, '89		$5,384.40	
P. fee		2.02	
		5,386.42	
End. Brown, Steese & Clark, less int		51.14	
			5,335.28
Accept. Brown, Steese & Clark, due Nov. 11, '89.		5,000	
P. fee		2.04	
		5,002.04	
In favor Jno. Metcalf, end. G. P. Brown, less int		66.61	
			4,935.43
" Brown, Steese & Clark, due Nov. 15, '89.		5,000	
P. fee		2.04	
		5,002.04	
In favor Jno. Metcalf, end. G. P. Brown, less int		70	
			4,932.04
" Brown, Steese & Clark, due Oct. 10, '89.		5,000	
P. fee		2.06	
		5,002.06	
In favor J. S. Mackintosh, end. G. P. Brown and G. W. Hollis, less int		41.69	
			4,960.33
Note Riverside & Oswego Mills, due Nov. 23, '89.		12,671.34	
Prot. fee		2.02	
		12,673.36	
End. Brown, Steese & Clark, less int		194.29	
			12,479.07
Total			$62,333.47
167 Less Philbrick Bros.' note paid. $2,500			
Less interest on demand note. 188.33			
		$2,311.67	
Less Norway Plains note paid		10,000	
" proceeds of sale of draft $10,000 on Brown, Steese & Clarke, by H. H. Hollis, @ 25%		2,497.59	
" proceeds of sale note $7,036.63, Phœnix Woolen Co., @ 25%		1,761.78	
" proceeds of sale note $12,131.67, Riverside & Oswego mills, @ 62½%		7,463.52	
" proceeds of sale draft $5,000, J. S. Mackintosh, @ 31%		1,551.66	
			25,586.22
Bal			36,747.25
Less dividend from J. S. Brown			538.44
			36,208.81

168 (Endorsed:) 515. (Firm.) Case No. 737. Oath of International Trust Co., a corporation, creditor. In the case of Brown, Steese & Clarke, insolvent debtor. True copy of proof excepting the notes, etc., used as vouchers. Attest: John D. Cobb, assist. register. 36,747.25. Allowed. G. W., judge. Feb. 4, '91.

169 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } ss:

Court of Insolvency.

In the Case of GIDEON P. BROWN, Insolvent Debtor.

I, John M. Graham, president of the International Trust Company, a corporation duly established by law, and having its usual place of business at Boston, State of Massachusetts, hereto duly authorized by said corporation, do swear that said Gideon P. Brown, by whom proceedings in insolvency have been instituted, at and before the date of such proceedings was and still is, on notes and draft-, according to statement and memoranda hereto annexed, justly and truly indebted to our said corporation in the sum of forty-four thousand six hundred seventy-two & $\frac{18}{100}$ dollars, for which sum or any part thereof I have not, nor has any other person to the use of said corporation, to my knowledge or belief, received any security or satisfaction whatever beyond what has been disposed of agreebly to law.

And I do further swear that to the best of my knowledge and belief the said claim was not procured by said corporation for the purpose of influencing the proceedings in this case.

And I do further swear that I have not, and to the best of my knowledge and belief said corporation has not, directly or indirectly, made or entered into any bargain, arrangement, or agreement, express or implied, to sell, transfer, or dispose of said corporation's claim or any part of its claim against said debtor; nor have I nor has said corporation, to the best of my knowledge and belief, directly or indirectly, received or taken or made or entered into any bargain, arrangement, or agreement, express or implied, to take or receive, directly or indirectly, any money, property, or consideration whatsoever to myself or to any person or persons to said corporation's use or benefit, under or with any understanding or
170 agreement, express or implied, whereby said corporation's vote for assignees or its assent to the debtor's discharge is or shall be in any way affected, influenced, or controlled, or whereby the proceedings in this case are or shall be affected, influenced, or controlled.

JNO. M. GRAHAM,
Pres't International Trust Co.

SUFFOLK, ss:

MARCH 3, 1890.

Then personally appeared the above-named John M. Graham and

made solemn oath that the foregoing declaration by him subscribed is true, before me—

R. M. MORSE, JR.,
Justice of the Peace.

171	Accept. Brown, Steese & Clark, due Sept. 30, '89	$5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less interest	32.50	
			4,969.54
Accept.	Brown, Steese & Clark, due Nov. 5, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int	62.50	
			4,939.54
"	Brown, Steese & Clark, due Nov. 5, '89.	5,000.00	
	Protest fees	2.04	
		5,002.04	
	In favor of H. H. Hollis, end. G. P. Brown, less int	62.50	
			4,939.54
	Brown, Steese & Clark, due Nov. 11, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of John Metcalf, end. G. P. Brown, less int	66.61	
			4,935.43
"	Brown, Steese & Clark, due Nov. 15, '89.	5,000.00	
	Prot. fees	2.04	
		5,002.04	
	In favor of John Metcalf, end. G. P. Brown, less int	70.00	
			4,932.04
"	Brown, Steese & Clark, due Oct. 10, '89.	5,000.00	
	Prot. fees	2.06	
		5,002.06	
	In favor of J. S. Mackintosh, end. G. B. Brown & G. W. Hollis, less int	41.67	
			4,960.33
"	Brown, Steese & Clark, due Aug. 28, '89.	10,000.00	
	Prot. fees	2.06	
		10,002.06	

	In favor of H. H. Hollis, end. G. P. Brown, less int.	11.67	
			9,990.39
"	Brown, Steese & Clark, due Aug. 17, '89.	5,000.00	
	Prot. fees....	2.04	
		5,002.04	
	In favor of J. S. Mackintosh, end. G. P. Brown & G. W. Hollis; add int....	3.33	
			5,005.37
			$44,672.18
	Credit by dividends from estates of G. W. & H. H. Hollis		4,839.25
			$39,832.93

Claim of International Trust Co. against estate of G. P. Brown may be allowed as per above statement.

R. M. MORSE, JR.,
By M. M.,
For Int. Trust Co.

172 (Endorsed:) (Brown.) 522. Case No. 737. E. Oath of International Trust Co., a corporation creditor, in the case of Brown, Steese & Clarke, insolvent debtors. Filed March 5, 1890. Al. March 18, '91. $39,832.93. G. W. True copy of proof, excepting the notes, etc., used as vouchers. Attest: John D. Cobb, assist. register.

173 (*Copy of Decision. Filed December* 12, 1894.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

Decision.

This case is now before the court on the plaintiff's motions for judgment, to charge various garnishees, to suppress portions of garnishees' affidavits, and to reopen the case after final hearing to allow the plaintiff to summon in new parties. The proceedings have been so long and complicated, attended by exceptions at every step, and the intention of carrying the case to the appellate division has been so frequently avowed, that while, perhaps, no good purpose will be subserved by elaborating the reasons of my decision, yet it does seem that some indication by me of the travel of the case might aid the revising court to a more ready understanding of the matter.

The writ which was issued August 13, 1889, was returnable to the December term, 1889, of the court of common pleas, wherein John A. Cross, of the city and county of Providence, was plaintiff and Gideon T. Brown, of Alston, Edward Steese, and Amasa Clarke,
of Brookline, all in the State of Massachusetts, now or late
174 copartners doing business under the firm name of Brown,
Steese & Clark, were defendants, and it was served on said August 13, 1889, and the two following days by the attachment of certain wool and by trustee process on the Atlantic mills, the Lippitt Woolen Company, the Wauskuck Company, the Riverside and Oswego mills, and on the assignees of said Riverside & Oswego mills under a voluntary assignment for the benefit of creditors made almost contemporary with the service of process on said Riverside & Oswego mills. The said Lippitt Woolen Company, Wauskuck Company, and Riverside & Oswego mills were all corporations organized under the laws of the State of Rhode Island. The suit was to recover amounts alleged to be due upon two promissory notes made by the defendants, Brown, Steese & Clark, at Boston, in the State of Massachusetts, on the 9th day of April, 1889, and the 7th day of May, 1889, respectively, and payable to the order of the International Trust Company at its place of business, in said Boston, and by said International Trust Company, respectively, endorsed and delivered to the plaintiff, the said International Trust Company, being a Massachusetts corporation.

Verdict for the plaintiff was rendered at a jury trial in the court of common pleas at its March term, 1890, in the sum of $41,534.27, and subsequently the defendant's petition for a new trial was denied
by the supreme court. I see no reason why judgment should
175 not be entered on the verdict whenever the plaintiff asks for
it, and, as he has now moved for it, his motion for judgment is granted.

The various parties served with copies of the writ for the purpose of attaching by trustee process the defendants' property in their hands filed disclosures, and no motion has been made in regard to the Atlantic mills, as its disclosure showed no funds. Theophilus King and Bullens and Sawyer respectively filed motions that they might become parties to said action so far as respects the title to the personal estate and might be heard as to the charging of the said trustees therein. King claimed all the personal estate of the defendants in the hands of the Wauskuck Company and the Lippitt Woolen Company and Bullens and Sawyer claimed all the personal estate of the defendants in the hands of the Riverside & Oswego mills, both King and Bullens and Sawyer claiming the same by virtue of assignments thereof to them by William R. Dupee, Weston Lewis, and Samuel P. Colt, as assignees in insolvency under appointment by the court of insolvency within and for the county of Norfolk and State of Massachusetts of the insolvent estate of the firm composed of the several defendants. It was claimed that the insolvent proceedings were voluntary upon the petition of said Steese and Clark, subsequently assented to on the part of said Brown by

appearing and submitting himself to the jurisdiction of the
176 court; that the first publication of the notice of issuing the warrant of insolvency therein was on the 23rd day of August, 1889, and that inasmuch as under the laws of Massachusetts it was provided that the assignment under the proceedings in insolvency should vest in the assignees in insolvency all the property of the debtor which could have been sold, assigned, or conveyed or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and should be effectual, subject to certain provisions, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication, as aforesaid, said insolvency proceedings would dissolve the attachments, if made by the International Trust Company, and would pass the title to the insolvent estate in the hands of the garnishees. It was further claimed that the plaintiff in this case, owing to the relations existing between him and the International Trust Company of Boston, stood in no better position than said International Trust Company.

The motions of Theophilus King and of Bullens and Sawyer, founded on the claims as hereinbefore stated, were heard upon testimony and argument at the same time, and by rescripts entered March 6th, 1893, were denied and dismissed for reasons hereinafter
stated. Exceptions having been taken by said King and by
177 said Bullens and Sawyer, time for presenting bills of exceptions was extended, at their request, to five days after the termination of the then current March term, 1893, and on May 10, 1893, bills of exception were presented for allowance. On October 3, 1893, I refused to allow the bills of exception, they, in my opinion, having been prematurely presented, and on the same day, being satisfied I had erred in my rescripts of March 6, 1893, having been under the misapprehension that I had been trying the question of title to the garnisheed property instead of the merely preliminary question as to whether claimants were entitled to be heard upon the question of title, I withdrew those rescripts and permitted the respective claimants to become parties so far as respects the title to said respective personal estates, and the question of title, in my opinion, would properly come up for disposition upon motions to charge the respective garnishees; to which withdrawal of rescripts and allowing the claimants to become parties as aforesaid the plaintiff strenuously objected.

On June 13, 1893, the motion of the assignees of the Riverside & Oswego mills to be discharged as garnishees, after hearing on their disclosures and argument by counsel, was granted.

Upon the plaintiff's motions to charge the Lippitt Woolen
Company, the Wanskuck Company, and the Riverside &
178 Oswego mills, involving questions of title to the personal property, very numerous hearings were had, and the questions raised upon the hearing of the claimants' motions to be allowed to become parties so far as respects the title to the personal property again came up for consideration.

I am of the opinion that the Lippitt Woolen Company must be charged for $11,938.39, the amount disclosed in its affidavit, together with interest thereon, unless, indeed, the insolvency proceedings in Massachusetts and the transfer to the claimant King by the assignees in insolvency have absolved it from liability as garnishee in this suit. I think that after verdict for the plaintiff it is too late for this court to inquire into the relations between the plaintiff and a prior holder of the notes sued upon. I think a transfer to the claimant King from the Massachusetts assignees in insolvency, whose assignment in insolvency vested the insolvents' property in themselves only at the time of the first publication of the notice of the issuing of the warrant of insolvency, to wit, on August 23rd, 1889, being ten days after the garnishment in this suit, could pass no title to the claimant that would take precedence here in Rhode Island over the garnishment.

The Lippitt Woolen Company's amended affidavit, filed January 27, 1894, sets forth that its indebtedness of $11,938.39 to the defendants results from the sale by the defendants to it of certain
179 wool, all the defendants being citizens of Massachusetts and having their only place of business in Boston, in that State, where all of said wool was delivered and where the contract price thereof, viz., $11,938.39, was to be paid, and the said indebtedness, although fixed and definite, had not at the time of the service of process in this action upon said Lippitt Woolen Company become by the terms of said sale, either in whole or in any part, payable, nor did any part of the sale become so payable until September 12, 1889.

The Lippitt Woolen Company's amended affidavit filed June 13, 1893, sets forth that the assignees in insolvency of the defendants began suit in Massachusetts against it for the recovery of the contract price of said wool, viz., $11,938.39, by process dated April 20, 1891, and served the same day by trustee process upon one Hiram Leonard, a debtor in Massachusetts of said Lippitt Woolen Company, and though said Lippitt Woolen Company pleaded in that action the existence of the proceedings in this suit the Massachusetts court rendered judgment against it, but directed execution thereon to be stayed and the parties plaintiff and defendant to file an agreement therefor, and an agreement was entered into by said parties that execution in that suit should not be issued until the suit at bar be determined, all of which fully appears by a copy of said legal proceedings attached to said last-mentioned supplemental affidavit of said Lippitt Woolen Company.

It does not seem to me, however, that the above-recited
180 facts contained in the garnishee's disclosure are sufficient to absolve it from liability under this garnishment. In my opinion the rule of *debitum in presenti, solvendum in futuro*, applies as to the time of payment, and that the plaintiff and the garnishee in this suit being both residents of Rhode Island gives this court jurisdiction and control to the exclusion of the Massachusetts proceedings, and that the Lippitt Woolen Company is chargeable as garnishee herein.

The plaintiff claims that the Lippitt Woolen Company, as garnishee, should be charged with interest on the amount disclosed in its affidavit. In response to plaintiff's questions the Lippitt Woolen Company swore that it had never made any special deposit of the amount disclosed in its original affidavit as due from it to the defendants; that it had never set apart said sum; that it was impossible to state how its use of the money due from it to the defendants had been changed in consequence of the service of the plaintiff's writ upon it; that said Lippitt Woolen Company used all its money as it chose from time to time without distinction; that at the time of the service of the writ in this case upon it its moneys were in various banks and individuals' hands, and has fluctuated in amount from time to time since then according to the necessities of its business.

Upon such a state of facts I am of the opinion that the
181 Lippitt Woolen Company should be charged with interest at the rate of six per cent. per annum from September 12, 1889. See Woodruff *v.* Bacon, 35 Conn., 97, 104; also Drake on Attachment, sec. 665, and cases cited.

The Wauskuck Company's disclosure shows that it had in its hands and possession of the defendants at the time of the service of the plaintiff's writ upon it $28,823.80; that a part thereof, viz., $6,808.23, was the price of 82 bags of wool bought by it of said defendants July 26, 1889, under the supposition that said 82 bags of wool were the property of said defendants; that after the purchase of said wool the Massachusetts Loan & Trust Company of Boston, Massachusetts, notified it that said wool was the property of said Massachusetts Loan & Trust Company and not the property of said defendants; that said defendants had no right or authority to sell the same, and that said Massachusetts Loan & Trust Company would look to said Wauskuck Company for said purchase price thereof, and that said Massachusetts Loan & Trust Company now has a suit in trover pending in this court against said Wauskuck Company for the value of said 82 bags of wool.

Said Wauskuck Company's disclosure also shows that at the time of the service of plaintiff's writ upon it all the property of said defendants in the hands and possession of said Wauskuck Company had already been attached in suits brought against said de-
182 fendants by the Hollis Dressed Meat & Wool Company, the Industrial Trust Company, and the Massachusetts Loan & Trust Company, which suits are still pending, and the aggregate of amounts claimed in said suits exceed the amount of defendants' property in said Wauskuck Company's hands and possession.

The disclosure of the Riverside & Oswego mills shows a very complicated state of affairs existing between said garnishee and the defendants, so that the balance due from said garnishee to the defendants is difficult to fix, and the plaintiff claims that the charging order should be for $140,337.06 (together with interest thereon), but said disclosure also showed that at the time of the service of plaintiff's writ upon it all of the property of said defendants in the hands and possession of said Riverside & Oswego mills had already been

attached in suits brought against said defendant by the Industrial Trust Company and the Hollis Dressed Meat & Wool Company, and the aggregate of amounts claimed in said suits exceed the amount of defendants' property in the hands and possession of said Riverside & Oswego mills.

In my opinion I cannot now enter a charging order against the Wanskuck Company and the Riverside & Oswego mills, for until it shall be ascertained by the disposition of pending suits, wherein said garnishees had been previously served with trustee process,
183 it is impossible for me to determine whether either of said garnishees are, in the words of the statute, "chargeable as the trustee of the defendant, and, if chargeable, to what extent." Jud. act, ch. 34, sec. 18, p. 176. The statute contemplates the possibility of successive attachments of the same property, and that the respective debts or damages of the several attaching creditors shall be satisfied in the order of their respective attachments. Jud. act, ch. 33, sec. 32, p. 170; ch. 34, sec. 1, p. 172. The court in charging a garnishee must determine the amount for which he is chargeable. Jud. act, ch. 34, sec. 18, p. 176. And the execution must have such amount expressed therein. Jud. act, ch. 36, sec. 20, p. 188. Until the amount due upon prior attachments has been determined, there is no way of determining what is applicable under this attachment.

The court suggested this difficulty and offered to hold the case until the determination of the prior attachment suits, but that course was not satisfactory to the plaintiff, who wished the matter to be determined now, so that presumably, if adverse to him, it might be carried to a higher tribunal.

After the close of the final hearing the plaintiff asked to have the case reopened to permit him to make the prior attaching creditors, viz., the Industrial Trust Company, the Hollis Dressed Meat & Wool Company, and the Massachusetts Loan & Trust Company, parties to this action, and on July 14, 1894, the court, by rescript,
184 indicated what its final decision would be. This form of intimation instead of decision being followed at the plaintiff's suggestion to obviate some fancied inconvenience to him in taking the question to the appellate division, the plaintiff's motion to reopen the case for the purpose of making new parties is now formally, as it has been before practically, denied.

The plaintiff's motion, it was stated, was suggested by language used in the appellate division in Hanaford *v.* Hawkins, index N N, p. 58.

An examination of that case, however, does not disclose to my mind such an analogy to the case at bar as to require me to grant the motion unless in my opinion some good purpose would be subserved thereby. In Hanaford *v.* Hawkins it was not even known that the supposed assignee of the garnisheed fund had had any notice of the garnishment, so that he might appear, if he saw fit, and be heard on the question of charging. In the case at bar all the persons sought by the plaintiff to have made parties here are now actually parties to suits in this court, of their own bringing, to de-

termine the very question whether the suits brought by them against the defendants in this case and wherein they have attachments prior to the plaintiff's are good and valid. If those parties should be summoned into this case, then there would be two suits pending to determine the validity of their claims against the defendants, and if in this case those claims should be determined
185 not to be valid and the jury in the cases wherein they have attachments should find that the claims were valid, no authority, it seems to me, would exist in this court to vacate those attachments. The appellate division has said in Cross-petitioner, 17 R. I., 568, that an attaching creditor cannot, to protect his rights under the attachment, intervene in an action brought by a creditor with a prior attachment against the common debtor. If, therefore, the plaintiffs in those cases were summoned into this suit, unless, indeed, this suit was simply continued until the prior attachment suits shall have been determined, this court would practically be permitting to be done by indirection what the appellate division has said cannot be done directly. In the words of Mr. Justice Stiness in Cross-petitioner: "The orderly way in law is for each one to pursue his own rights in his own action, and if in so doing another seeks to circumvent him by fraud the existing remedies are ample."

The question raised by the trover suit of The Massachusetts Loan & Trust Company *v.* The Wanskuck Company as to the validity of a prior pledge is also pending before this court at the instance of the Massachusetts Loan & Trust Company, and the general principle applicable in the case at bar as to the prior attachment suits would also be applicable to the trover suit.

186 Even if bills of interpleader had been brought by the garnishee in this case to compel the plaintiff and the prior attaching creditors to determine their respective claims to the fund under their respective attachments, it seems to me that the court wherein the bill of interpleader was pending would simply hold it until the suits at law in this court had been determined. As before indicated, the court distinctly offered to hold the question of charging the garnishees in this suit where there are previous attachments existing until those previous suits had been determined, which offer was declined. The court also, in its intimation as to what its decision would be on the motion to add parties, most significantly referred to the purpose of the motion to reopen, so that the plaintiff might even then avail himself of any desire on his part to have this suit stand until those suits were disposed of. In my opinion, the question of garnishee's liability in this case, where there are prior attachments, is not ripe for judgment, but if the plaintiff, being of a different opinion, deems the fruit to be ripe and desires to pick it by having final judgment in this court passed upon his claim to charge the garnishees as it now stands, so that if adverse to him he can take the matter to the appellate division, it is his right to do so.

My decision is that the Wanskuck Company and the Riverside and Oswego mills are not properly chargeable as trustees of
187 the defendants. In the last sentence I have used the language of the statute, Jud. act., ch. 34, sec. 18, p. 176, though

the common form of expression is to discharge the garnishees when they are determined not to be properly chargeable; but as a final decision is forced upon the court at this time, it is questionable whether there is any practical difference between a judgment that the garnishee is not properly chargeable and a judgment that he be discharged.

As on account of the existence of prior attachments I cannot charge the Wanskuck Company and the Riverside & Oswego mills, it seems to me it would be only a work of supererogation, leading to no practical result, should I attempt to determine at this time whether said garnishees would be chargeable if said prior attachment did not exist, and hence I have not considered the question.

The plaintiff has moved that certain portions of the affidavits of the garnishees in this case be suppressed and stricken out as immaterial, irrelevant, incompetent, impertinent, and scandalous, and by consent of counsel this motion was to be determined in the final decision. While some of the matter it is asked to have suppressed and stricken out is in my opinion irrelevant, and as such when offered by the claimants as mere testimony was not admitted, but when presented and sworn to by the garnishees in their affi-

188 davits was allowed to be filed, such permission was granted because in the opinion of the court the rights and liabilities of garnishees and claimants are very different. A garnishee is involuntarily summoned in; if he fails to answer fully he does so at the peril of being obliged to pay twice; if he makes a false answer or affidavit he is liable to an action for damages which may result to the plaintiff from such answer or affidavit. The sworn answer of the garnishee shall be considered true in deciding how far said garnishee is liable, though either party to the suit or any claimant of the estate so attached may allege and prove any facts not stated or denied by said garnishee or trustee that may be material in so deciding. While in the case of an ordinary witness testimony deemed by the court to be irrelevant would not be admitted to take up the time of the court, yet in the case of garnishees' affidavits as the matter disclosed is deemed by the garnishee necessary for his protection, it would seem to be the better course to let them stand, and upon consideration of the case to reject irrelevant parts, than to suppress and strike out such parts, as in the former case the appellate division (if the case should be taken up to it) would have the full and undisturbed garnishees' disclosures before it, and could also reject what it deemed irrelevant.

To sum up, then, the court herein decides—

189 That plaintiff's motion to suppress and strike out certain portions of the garnishees' affidavits be denied.

That the plaintiff's motion filed June 12, 1894, to reopen the case for the purpose of making new parties be denied.

That plaintiff have judgment on his verdict.

That the Lippitt Woolen Company is chargeable in this action, as trustee of the defendants, in the sum of $11,938.39, together with interest thereon, at the rate of 6 per cent. per annum, from September 12, 1889.

And that the Wanskuck Company and the Riverside & Oswego mills are not chargeable in this action as trustees of the defendants.

The decision of the court discharging the assignees of the Riverside & Oswego mills, as trustees of the defendants in this action, having already been given, this concludes and completes the final decision of this court in this case.

(S'g'd) HORATIO ROGERS,
J. S. C., C. P. Div.

190 (*Copy Plaintiff's Petition for a New Trial. Filed April* 12, 1895.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division, September Session, 1894.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARK. } No. 4867.

And now, after rulings and decisions, comes John A. Cross, the plaintiff in the above-entitled case, and prays that a new trial be granted to him therein, and as grounds therefor alleges that the court erred in its rulings and decisions following, viz:

1. In allowing to be filed and in admitting and receiving each of the supplemental affidavits or disclosures by the several trustees or garnishees in the form and manner and at the times and under the circumstances that they were respectively allowed, admitted, and received, as shown by the record and files.

2. In allowing to be filed and in admitting and receiving the supplemental affidavits or disclosures by the several trustees or garnishees allowed to be filed on January 27th, 1894, without requiring either of them to show any cause or reason for filing them at that late day and without imposing any condition upon their being filed, as shown by the statement of the case.

3. In refusing to admit any testimony under the plaintiff's allegation of facts filed January 27th, 1894, as shown by such statement, and in denying the plaintiff's motion to suppress portions of such supplementary affidavits, and in refusing to go into or hear said motion in detail, as shown by said statement.

191 4. In admitting said Theophilus King and Bullens and Sawyer respectively as claimants of the property attached and as parties to the case upon their intervening petitions filed in the case.

5. In refusing to summon in the prior attaching creditors upon the property in the possession of the trustees.

6. In discharging the assignees of the Riverside and Oswego mills as trustees.

7. In deciding that the Wanskuck Company was not chargeable as trustee.

8. In deciding that the Riverside and Oswego mills was not chargeable as trustees.

9. In each of its rulings in admitting and rejecting evidence and testimony against the objection of the plaintiff as shown upon the statement of the case as allowed and on file.

(S'g'd) By his attorney, JAMES TILLINGHAST.

192 (*Copy of Petition of Lippitt Woolen Co. and Theophilus King for New Trial. Filed April* 11, 1895.)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, } *sc:*
Providence, }

Supreme Court, Appellate Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE, LIPPITT WOOLEN CO., Alleged Trustee; Theophilus King, Adverse Claimant.

Adverse claimant's and alleged trustee's petition for new trial.

In the above-entitled cause, which was heard in the common pleas division of the supreme court, before Mr. Justice Rogers, and wherein a decision was rendered and entered giving judgment for the plaintiff against the defendants and charging the Lippitt Woolen Company, as trustee of the defendants, the said Theophilus King, adverse claimant, and the said Lippitt Woolen Company, alleged trustee, severally and respectively deeming themselves aggrieved by certain directions, rulings, and decisions of the common pleas division of the supreme court in certain matters of law raised by the pleadings or apparent upon or brought upon the record by a statement of the evidence and rulings thereon, respectfully peti-
193 tion this honorable court to grant a new trial and cause such other proceedings to be had therein as to law and justice shall appertain.

And the said Theophilus King, adverse claimant, and the said Lippitt Woolen Company, alleged trustee, severally and respectively referring to the record, to the pleadings, to the affidavits or disclosures of the Lippitt Woolen Company, alleged trustee; to the statement of the evidence and rulings thereon and the files in this cause, and to the final decision of December 12, 1894, set forth specifically the grounds for such new trial, as follows:

(1.) For that on the affidavits or disclosures of the Lippitt Woolen Company, alleged trustee, and on the additional facts duly admitted in evidence the order or judgment of the common pleas division of the supreme court charging the Lippitt Woolen Company, as trustee in this action, was erroneous, the said Lippitt Woolen Company not being so chargeable on the said disclosures and facts, but entitled to a discharge.

(2.) For that the said court erroneously held inadmissible and ruled out the laws of Massachusetts, enacted subsequent to the beginning of this suit, amendatory of said chapter 157 of the Public

Statutes of Massachusetts, duly offered in evidence by the adverse claimant. (Statement of the Evidence & Rulings, pp. 16–18.)

(3.) For that near the close of the trial the said court erro-
194 neously held, ruled, and directed as follows:

"The COURT: The court being of the opinion that the testimony of Mr. Brown referring to the sale of wool to the Lippitt Woolen Company is immaterial in view of the subsequent development of the matters in hearing, the court revises its rulings as to the objections made by plaintiff's counsel thereto and sustains all said objections. The answers to such questions to Mr. Brown as were thus objected to by plaintiff's counsel are stricken out." (Statement of the Evidence & Rulings, p. 29.)

(4.) For that the said court erroneously ruled out as irrelevant and immaterial evidence duly offered by the adverse claimant to show that Mr. Brown's participation in the insolvency proceedings in the case of Brown, Steese & Clarke was voluntary. (Statement of the Evidence & Rulings, p. 30, 31.)

(5.) For that the said court erroneously ruled out as immaterial and inadmissible and as not entitled to full faith and credit with the effect claimed therefor by the adverse claimant as against these garnishment proceedings the duly authenticated record and judicial proceedings of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts in the case of Brown, Steese & Clarke, insolvent debtors, to wit, of the debtors' petition in
195 said case, dated August 10, 1889, and filed August 12, 1889; of the warrant, dated August 21st, the first publication of the notice of issuing whereof was made on August 23, 1889, and of the assignment to the assignees in insolvency, dated the 4th of September, 1889, all being annexed to the petition of Theophilus King, adverse claimant, and to which reference is hereby made, duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him; also the duly authenticated record of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts in the same case of the prayer of the assignees in insolvency of Brown, Steese & Clarke for leave to make sale and conveyance of the claims of Brown, Steese & Clarke against the Lippitt Woolen Company and the Wauskuck Company, with the decree of the court thereon, the instrument being undated, but the decree being allowed November 19, 1890, and marked on the back "B" in ink, and the original instrument of sale and conveyance from the assignees in insolvency to Theophilus King, made in accordance therewith, being dated the 19th of November, 1890, and marked on the back "D" in ink, both being among the files in this cause and to which reference is hereby made, each duly offered in evidence by the adverse claimant as tending to prove and establish the title alleged and claimed by him.

(6.) For that the said court in its ruling and decision
196 charging the said Lippitt Woolen Company, as trustee in this action, erroneously held as not entitled to full faith and credit with the effect claimed therefor by the said Lippitt Woolen Company and the adverse claimant the duly authenticated record

of the judgment of the superior court for the county of Suffolk and Commonwealth of Massachusetts, annexed to and made a part of the supplemental affidavit of the Lippitt Woolen Company, and on which the said Lippitt Woolen Company relied as entitling it to a discharge and on which the said adverse claimant relied as merging the debt and establishing his title and exclusive right to enforce the obligation of the Lippitt Woolen Company.

(7.) For that all the right, title, and interest Brown, Steese & Clarke, citizens and residents of Massachusetts, had in the debt of the Lippitt Woolen Company followed the person of the owners and was property in Massachusetts, and hence was submitted by the owners to the jurisdiction of and for administration by the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts by the debtors' petition of August 12, 1889, and passed under the assignment to their assignees in insolvency by the assignment of September 4, 1889, so that the Lippitt Woolen Company was no longer indebted or chargeable on said debt to the said Brown, Steese & Clarke or the garnisher herein suing substantially in the name and right of said Brown, Steese & Clarke.

197 And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(8.) For that the assignment and transfer of all Brown, Steese & Clarke's right, title, and interest in the credit, being an assignment and transfer of a mere chose in action by and to citizens of Massachusetts, was made and completed in Massachusetts, no notice (of the assignment) to the garnishee to perfect the assignee's title being required either by the law of Massachusetts or of Rhode Island.

And the assignment, being governed by the laws of Massachusetts and valid and effective by those laws, was valid and effective everywhere, at least as to all property except such tangible property as was capable of having an actual situs of its own apart from the owner and actually situated within the jurisdiction and dominion of the State of Rhode Island.

198 And no legal fiction can extend the jurisdiction of the State of Rhode Island to the property of a non resident in a debt which he holds against a resident, at least in the absence of jurisdiction of the person of the owner and as against the jurisdiction of a court having jurisdiction of the owner at his domicile, and consequently of all such property as follows the person of the owner, and can only be affected by a proceeding *in personam* by a court having control of the owner.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the

superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(9.) For that the merger of the debt of the Lippitt Woolen Company in the said judgment was, when the said judgment was properly set up in these proceedings in Rhode Island, a complete bar to any order charging the said Lippitt Woolen Company on the said debt as trustee of the principal defendants in this action, the parties being in legal effect the same and bound by such judgment, all claiming under the said Brown, Steese & Clarke and repre-
199 sented by them in the insolvency proceedings in Massachusetts, and the proceedings in the superior court of Massachusetts being supplementary and ancillary in this respect to those in the Massachusetts court of insolvency.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the superior court of Massachusetts and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(10.) For that at the time of the alleged attachment in this action, or at any time at or before the assignment in Massachusetts, the obligation of the Lippitt Woolen Company to the principal defendants, citizens and residents of Massachusetts and not subject to the control of the Rhode Island court, was not property within the State of Rhode Island nor subject to the legislative power and control of the State of Rhode Island.

And for that the said court in its rulings and decisions as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of
200 the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(11.) For that even if the legislature of Rhode Island might, for the purpose of attachment, change the ordinary situs and establish a local situs at the domicile of the debtor within the State for a debt due to a non-resident who is not subject to its jurisdiction or control, the attachment laws of Rhode Island have nowhere declared or attempted to establish any such local situs or to change the ordinary situs of such debts, nor do they purport to authorize an attachment of property which a non-resident has in a debt which he holds against a resident, but only authorizes in general terms an attachment of the property in the hands of the garnishee.

And for that the said court in its rulings and decisions as to the

faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the admissibility of the evidence of the adverse claimant's title, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect
201 so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(12.) For that the said common pleas division of the supreme court never acquired control or jurisdiction of the debt.

(*a.*) The Rhode Island court acquired no control or jurisdiction of the debt, and could have acquired none until on or after September 12, 1889, the debt not being due until that date and being payable in Massachusetts at maturity, so that the principal defendants had and could have had no right of action, nor could the garnishee have made any effective tender in Rhode Island prior to that date.

(*b.*) Before said September 12, 1889, the Massachusetts court of insolvency, having jurisdiction of the *res* of the subject-matter and of the parties affected thereby, had assigned and transferred all Brown, Steese & Clarke's right, title, and interest in the credit, and as the obligation of the Lippitt Woolen Company to said Brown, Steese & Clarke was in effect negotiable under the laws of Massachusetts the Lippitt Woolen Company ceased to be any longer indebted or under obligation to said Brown, Steese & Clarke, and was alone indebted and under obligation to the said assignees in insolvency or to any purchaser from them.

(*c.*) Having submitted the administration of their property to the Massachusetts court of insolvency, the principal defend-
202 ants could not afterwards, by submitting to the jurisdiction of the Rhode Island court, give the latter court jurisdiction over the same property, especially where, as in this case, the Rhode Island court had and could have had no jurisdiction over the property without and independently of such submission; and the principal defendants never appeared or became subject to the jurisdiction of the Rhode Island court until January 7, 1890, long after the date of the assignment of their property to their assignees in the court of insolvency in Massachusetts.

And for that the said court, in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title, and as to the faith and credit to be given to the duly authenticated records and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the chargeability or non chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(13.) For that the said common pleas division of the supreme court had no power or jurisdiction to affect the debt by garnishment proceedings as against the non-resident creditors to whom due, so long as those creditors were not served with process or sub-

ject to the jurisdiction of the court, and especially as against
203 the Massachusetts court of insolvency, which, by reason of its jurisdiction over the person of those creditors at their domicile, necessarily had jurisdiction over all of their property that, like the property in controversy in this action, was intangible and incapable of having a situs of its own apart from its owner and followed the person of the owners at their domicile, and could be affected only by a proceeding *in personam* by a court having jurisdiction and control of such owners.

(*a.*) As a suit in the nature of a judicial investigation, the said court had no power by the garnishment proceedings to discharge or impair the obligation of the garnishee's contract with a citizen of another State, where the creditor is not within the control of the court, and the Rhode Island statute, if construed to authorize such a proceeding, would be invalid as a statute impairing the obligation of contract.

(*b.*) As a simple attachment of property and a proceeding *quasi in rem*, the said court had no power or jurisdiction to affect the credit or Brown, Steese & Clarke's property in the debt, because the mere pecuniary obligation of a citizen of one State to a citizen of another State not only does not have, but is incapable of having, a situs of its own apart from its owner; and as the obligation of the Lippitt Woolen Company to citizens and residents of Massachusetts was not taxable in Rhode Island, simply because it was not
204 property within the State of Rhode Island or subject to the legislative power of that State, so and for the same reason it could not be made the subject of a proceeding *quasi in rem* in Rhode Island, where, as in this case, until long after the assignment in Massachusetts, the Rhode Island court had no jurisdiction or control over the obligees personally.

And for that the said court in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title and as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and of the superior court, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(14.) For that, irrespective of the question of jurisdiction, the Lippitt Woolen Company was never chargeable in respect of its obligation to the principal defendants.

(*a.*) Because the principal defendants had no present right of action in Rhode Island and no right to demand payment of the debt in Rhode Island, the same being payable in Boston, Massachusetts, at maturity, to wit, on or after September 12, 1889.

(*b.*) Because there was not only no present right of action in Rhode Island, but whether the principal defendants would
205 ever have any such right of action in Rhode Island was wholly contingent, and therefore by the law of Rhode Island

not subject to garnishment. Whether the principal defendants would ever have any such right of action in Rhode Island was contingent not only on the failure of the Lippitt Woolen Company to pay in Massachusetts at the time and place of payment, but also on Brown, Steese and Clarke's remaining the owner of such credit on or after such failure. Under the laws of Massachusetts, where the contract was both made and to be performed, and which therefore entered into and formed a part of the contract, this obligation was in effect negotiable and liable, on the happening of a certain event, which in fact happened, to be negotiated by the substitution in the place of the principal defendants of another who could sue and enforce such obligation in his own name and right. As a matter of fact, therefore, no right of action ever accrued to the principal defendants in Massachusetts even, much less in Rhode Island, and the plaintiff could have no greater rights against the garnishee than could the principal defendants if suing.

And for that the said court, in its rulings and decisions as to the admissibility of the evidence of the adverse claimant's title, and as to the faith and credit to be given to the duly authenticated record and proceedings of the Massachusetts court of insolvency and
206 of the superior court, and as to the chargeability or non-chargeability of the Lippitt Woolen Company, as trustee of the principal defendants in this action, should have in substance and effect so ruled and held, but in substance and effect erroneously ruled and held to the contrary.

(15.) For that the said court erroneously ruled out evidence duly offered by the adverse claimant for the purpose of and as tending to show that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only and in the interest, for the benefit, and in behalf of the International Trust Company of Boston, Massachusetts. (Statement of the Evidence & Rulings, pp. 13–15, 33–34.)

(16.) For that the said court also erroneously ruled and held immaterial the facts appearing upon the notes constituting the plaintiff's original cause of action, that said notes were by their terms restricted in the location of presentation and payment to the office of the International Trust Company in Boston, and were secured by collateral there deposited, and were thereby subject to an accounting in respect thereof and as between the parties thereto, and that said International Trust Company, being a citizen of Massachusetts, had made large proofs against the estate of said Brown, Steese & Clarke, insolvent debtors, in insolvency.

207 (17.) For that the said court erroneously ruled out as immaterial and inadmissible evidence duly offered by the adverse claimant as tending to prove and establish the title alleged and claimed by the said adverse claimant, and also evidence of facts not stated nor denied by the alleged trustee that might be material in deciding how far said alleged trustee was chargeable.

(18.) For and on behalf of the Lippitt Woolen Company: For that the said court erroneously ruled and held the said Lippitt

Woolen Company chargeable in this action with interest on said sum of $11,938.39.

LIPPITT WOOLEN COMPANY,
Alleged Trustee,

(S'g'd) By its att'y, W. G. ROELKER.

THEOPHILUS KING,
Adverse Claimant,

By his att'ys, ROBERT W. BURBANK,
(S'g'd) JOHN C. COOMBS,
CHAS. H. HANSON.

208 (*Copy of the Statement of the Evidence and Rulings. Filed March* 29, 1895.)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Statement of the evidence and rulings.

This is an action of assumpsit. The writ, wherein John A. Cross, of the city and county of Providence, was plaintiff and Gideon P. Brown, of Boston, Edward Steese, and Amasa Clarke, of Brookline, all in the State of Massachusetts, copartners under the firm name of Brown, Steese & Clarke, were defendants, issued August 13th, 1889, and was served in trustee process, on the same day, upon the Lippitt Woolen Company, the Riverside and Oswego mills, and the Wanskuck Company, each a corporation of this State, and on August 15th, 1889, upon the assignees of the Riverside and Oswego mills under a voluntary assignment for the benefit of creditors, and statutory service thereof was made by sending an attested copy of the writ by mail to the address of the defendants.

January 7th, 1890, the defendants appeared and pleaded the general issue, and on trial to the jury, on March 20th, 1890, a verdict was rendered for the plaintiff for $41,534.27.

The defendants filed in the supreme court their petition for a new trial, which was heard there on June 25th, 1890, and denied and dismissed on July 5th, 1890.

These several garnishees made and filed their affidavits or disclosures, and the plaintiff filed interrogatories, to which the
209 garnishees filed answers as appear in the files.

Afterwards and from time to time during and intermediate the hearings in the case upon charging the garnishees each of these garnishees moved for leave to file supplementary affidavits or disclosures, to each of which the plaintiff at the time objected and duly excepted to each of the rulings allowing the filing and receiving the same.

And to those allowed to be filed on January 27th, 1894, the

plaintiff claimed and moved that before being allowed to file them the trustees should be required to show some cause or reason for filing them at that late day; also that, if allowed to be filed at all, it should be upon condition that the trustees be required to submit to examination as witnesses, and, inasmuch as Mr. Chapin, the affiant for the Riverside and Oswego mills, resided out of the State, that a commission should issue to take his testimony as a witness; and the plaintiff duly excepted to each of the court's rulings denying each of these motions.

The plaintiff also, on February 27th, 1894, as required by the court, duly filed in writing his allegations of the facts which he claimed the right to prove upon the questions of how far the trustees were chargeable, and offered testimony and evidence to prove the same and duly excepted to the court's refusal to admit any testimony under these allegations. The plaintiff also, on February 21st, 1894, duly filed his motion to suppress portions of these supplementary affidavits and duly excepted to the court's denial of said motion and refusal to go into the same in detail.

The plaintiff also at the time duly objected to Theophilus
210 King or Bullens and Sawyer being admitted as adverse claimants and to said King and said Bullens and Sawyer being admitted as parties to the suit on the ground that their respective petitions therefor did not set out any valid or sufficient grounds to entitle them to be admitted or heard as such claimants; and the plaintiff duly excepted to the court's rulings admitting them as such claimants and parties.

The plaintiff also, on June 12, 1894, filed his application to reopen the case and to summon in the prior attaching creditors upon the property in the possession of the trustees and duly excepted to the court's denial of such application.

The plaintiff also duly excepted to the court's ruling discharging the assignees of the Riverside and Oswego mills as trustees, and also to its ruling holding that the Wanskuck Company and the Riverside and Oswego mills respectively are not chargeable as trustees in this action.

All of the record and files in said case are referred to as and made a part of this statement.

And the following is a statement of the testimony and other rulings and exceptions in the case:

211 Supreme Court, Common Pleas Division.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE.

(Before his honor Judge Rogers.)

FRIDAY, *December 1st*, 1893.

GIDEON P. BROWN sworn.

(By Mr. DAVIS:)

Q. You were the senior member of the firm of Brown, Steese & Clarke?
A. I was.
Q. During the year 1889, where was your residence?
A. At Boston.
Q. And that of Mr. Steese?
A. At Brookline.
Q. And that of Mr. Clarke?
A. At Brookline.
Q. All in Massachusetts?
A. Yes, sir.
Q. Where was your place of business?
A. At Boston.
Q. Had you any other place of business?
A. I had not.
Q. Where was the place of business of the firm of Brown, Steese & Clarke?
A. At Boston.
Q. Had they any other place of business?
A. No, sir.
Q. Where were the sales of wool to the Lippitt Woolen Company, as to which they have answered indebtedness in this suit, made?

Objected to by Mr. Tillinghast.

A long discussion ensued, occupying the entire day, until the adjournment.

Without ruling upon the question, the court adjourned to Saturday, December 2nd, 1893, at ten o'clock a. m.

Second day.

SATURDAY, *December 2nd*, 1893.

The court came in at ten o'clock a. m.

212 Testimony of GIDEON P. BROWN resumed:

The question the admission of which was under discussion at the time of the adjournment was read as follows:

Q. Where were the sales of wool to the Lippitt Woolen Company, as to which they have answered indebtedness in this suit, made?

Objected to by Mr. Tillinghast as conflicting with the affidavit and as irrelevant and immaterial.

Question admitted.

Mr. Tillinghast takes an exception to the admission of the question.

A. They were made in Boston.

Q. Who made the sales on behalf of Brown, Steese & Clarke?

Same objection by Mr. Tillinghast.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. I made the sales.

Q. And with whom representing the Lippitt Woolen Company?

Same objection by Mr. Tillinghast.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. Owen, Purdy & Co.

Q. With whom did you invariably deal in transactions with the Lippitt Woolen Company?

Objected to by Mr. Tillinghast as immaterial.

Question withdrawn.

Q. Was this a verbal sale?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: This was in the State of Massachusetts. It cannot be proved by oral testimony. It requires writing.

213 Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. No, sir.

Q. I will alter the question. Was there any memorandum of the sale made?

Objected to by Mr. Tillinghast as irrelevant and immaterial.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

A. There was.

Q. What was that memorandum?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: They have the English statute of frauds in Massachusetts. They have now shown already that the contract was made in Boston. They must show, therefore, a valid contract in Boston, and that they cannot show by parol. They cannot make a contract in Massachusetts for a large sale like this by parol. It must be in writing.

Objection overruled, question admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: Inasmuch as this is a matter of foreign law, I ask now to explain the exception and introduce the statute of Massachusetts, and if this is not admitted—that they have re-enacted

the English statute of frauds—I want to put it in, so that it may go up with the record. I ask leave to base my exception upon and to introduce the Massachusetts statute, unless they agree that that is the statute.

The COURT: I cannot tell what the contract is until I get it.

214 Mr. DAVIS: I am perfectly willing that the statute should be introduced.

Mr. Tillinghast puts into the case the Massachusetts statute of frauds, being section 5 of chapter 78.

Q. What was the memorandum of the sale? What sort of a memorandum was it?

A. It was what we know as a "sale note."

Q. What is a sale note?

Mr. TILLINGHAST: He must produce the note.

Question withdrawn.

Q. What became of those memoranda, if you know?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I really do not know.

Q. Do you know where they were kept or what would be likely to become of them? Where were they when you last knew of them?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. They were on my desk.

Q. Have you made any search for them?

Objected by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I have not.

Q. What became of the papers on your desk, Mr. Brown, to the best of your knowledge?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. I never knew.

215 (By Mr. TILLINGHAST:)

Q. When did you leave the city of Boston in 1889?

A. August 6th.

Q. When did you return?

A. The first day of January following or the last day of December.

Mr. DAVIS: The contract as to which I was interrogating Mr. Brown we desire to show was a verbal contract and not a contract in writing. The paper referred to was not a contract for the sale of wool, but a mere memorandum made at the time of the amount of the wool then sold. I now desire to go on with my direct examination of Mr. Brown.

(By Mr. DAVIS:)

Q. I ask you where the wool then sold to the Lippitt Woolen Company was deliverable?

Objected to by Mr. Tillinghast and withdrawn.

Q. What sort of a memorandum was that which you have testified was lost?

Mr. TILLINGHAST: That is to me a little ambiguous as a question. He says that the paper was a "broker's note."

Q. What is a "broker's note"?

A. (Witness attempts to give the form of a broker's note.)

Mr. Tillinghast objects to the question and to the proceeding undertaken by the witness to show by example what a broker's note is.

The court admits the testimony; to which Mr. Tillinghast takes an exception.

Mr. TILLINGHAST: I object, because broker's notes are as different in form as men's wills almost.

216 A. (Gives the form of a broker's note:) "City of Boston (then the month, the day of the month, and the year); sold for account of Brown, Steese & Clarke 200,000 pounds of Montana wool, at 19 cents a pound, to the Lippitt Woolen Company. Terms, 60 days from date of the bill. (Signed) O. N. Purdy & Co."

Mr. Tillinghast objects to the answer as irresponsive, improper, and inadmissible.

Answer admitted and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: May I ask whether that is an answer to the question of the general form of a broker's note, or is it meant to apply to this particular note?

The WITNESS: I did not mean to have it so apply.

Mr. TILLINGHAST: A broker's note certainly does not, in ordinary form, contain the name of the purchaser.

Q. The particulars that you have put into your answer were by way of illustration only?

A. That is all.

Q. Was this memorandum in that form?

A. Very nearly so.

Mr. TILLINGHAST: I object. That is certainly asking the contents of this paper.

Mr. DAVIS: I ask it for form only.

(Question withdrawn.)

Q. What was the form of this memorandum?

Objected to by Mr. Tillinghast.

Mr. TILLINGHAST: You are undertaking to show a trade that is in writing, and you have not shown that you cannot produce the better evidence, to wit, the written document.

217 Q. Was this memorandum made before or after the sale?

A. At the time of the sale, on the day of the sale.

Q. Was this memorandum made before or after the sale of the wool itself to the Lippitt Woolen Company?

Objected to by Mr. Tillinghast.

A. I did not understand the question at all.

Mr. COOMBS: Possibly, dependent upon your honor's ruling, we might feel obliged to ask opportunity to make farther search for the paper; but perhaps it might not be necessary to ask for that delay. I thought we might lead up to it by a question or two, so that we might see.

(By Mr. COOMBS:)

Q. Do you know who made the sales to the Lippitt Woolen Company out of which its present indebtedness to Brown, Steese and Clarke arose?

A. I do.

Q. Did you do it?

A. I think I made two of those sales.

Q. Personally?

A. Yes sir; personally.

Q. And did you know about the others? Did you know about the other sales made to the Lippitt Woolen Company out of which its present indebtedness to Brown, Steese and Clarke grew?

A. Those, if I remember correctly, were samples—samples of lots of wool.

Q. You sold certain samples?

A. Yes sir.

Q. I want to avoid any ground of confusion. By
218 "samples" do you mean that a small quantity is sold, to be followed by a larger order if it proves to be good or satisfactory?

A. For instance, if two bags of wool be picked out of a lot and we know that they are a sample lot, and that is billed, at a price we agree upon, if the wool is satisfactory, the sale is made from that—5 or 10 bags or 10,000 pounds.

Q. But the few bags that are sold first are a sale by themselves, anyhow?

A. I think so.

Q. Now there were some sample sales made in this transaction. Did that sample sale grow to the large transaction that you made yourself?

Objected to by Mr. Tillinghast.

A. Yes sir.

Q. How many transactions were there in the sales to the Lippitt Woolen Company out of which its present indebtedness arose?

A. I think four; possibly five; four, if I remember right.

Q. Would you state how many of them were sample sales and how many were sales of a large quantity of wool?

A. The bills alone would indicate that. Those little, small bills will show that those were the sample lots.

Q. In the sales that were made to the Lippitt Woolen Company you say the bills will show. Is there any entry on the books of Brown, Steese & Clarke concerning the sales?

A. There are bills.

Q. The bills are not entered on the books, are they?

219 A. The bills of the wool?

Q. Do I understand that copies of the bills, as made out to the purchaser, are entered on your books?

A. Yes, sir; a first copy.

Q. Have you got them?

A. They ought to be here.

Q. Were the originals of those press copies sent to the Lippitt mills?

A. Yes, sir.

Q. Can you find them in this letter book which I now hand you?

A. I find one bill here——

Mr. TILLINGHAST: Stop a moment. You need not read it.

Q. You do find copies of such letters?

A. Yes, sir.

Q. Sent to the Lippitt woolen mills?

A. Yes, sir.

Q. In relation to the date of the sales, how are they?

Mr. TILLINGHAST: That is asking the contents of the paper.

Q. In relation to the time of the sales, what are they?

Mr. TILLINGHAST: It does not matter.

Mr. COOMBS: It does matter.

Mr. TILLINGHAST: If you want to offer that letter, offer it and let it be ruled upon.

220 JOHN A. CROSS sworn.

(By Mr. COOMBS:)

Q. What is your age, residence, and occupation?

A. Age, 36; residence, Providence; I am a manufacturer.

Q. You are a manufacturer and a member of a firm or as an individual?

A. In a corporation.

Q. What corporation?

Objected to by Mr. Tillinghast as entirely immaterial.

A. The Valley worsted mills.

Q. What position do you occupy in the mills?

A. Secretary and director.

Q. Are you upon a salary?

Objected to by Mr. Tillinghast as immaterial.

A. Yes, sir.

Mr. Tillinghast moves to strike out the answer.

The COURT: I think that may stand. It shows, as a preliminary matter, who the witness is.

Mr. TILLINGHAST: Only it shows his private affairs.

Mr. COOMBS: I offer to show now, as I offered to show at the hearing when this came up before, that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit; that it is colorable only and in the interest, for the benefit of, and in behalf of the International Trust Company of Boston. The question on which the argument turned and the ruling of the court was made at the last hearing was this: I said then and I repeat now:

"Q. Now, I don't want to waste time in beating about the bush in this matter. My question is: The time and circumstances of your purchase of these notes on which you bring the suit of
221 Cross against Brown, Steese & Clarke, now at bar." That same question I put to the witness now.

Mr. TILLINGHAST: I object to the question.

(A very long discussion ensued, lasting until the adjournment. At the hearing on Saturday, December 9th, the court ruled out the question, and an exception was taken by Mr. Coombs.)

SATURDAY, *December 9th*, 1893.

JOHN A. CROSS resumed.

(By Mr. COOMBS:)

Q. You are the plaintiff in this case?

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

A. Yes, sir.

Q. Mr. Tillinghast is your counsel, is he not?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Have you given your counsel in this case any instructions to object to all questions touching your title to the notes sued on in this case?

Objected to by Mr. Tillinghast.

A. I have not.

Q. Have you given him instructions concerning objections to questions in this case?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Have you any objection of your own, unless it should be raised by your counsel, to state the time and place and cir-
222 cumstances of your acquisition of your title to those notes?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. Do you understand that I have offered to show by you that your title to the notes sued on in this case is colorable only, and that you in reality represent the International Trust Company of Boston as the party in interest in this suit?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. When, if ever, do you claim that you acquired any title to the notes sued on in this case?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. You understand that with both of your notes there appears to be upon the face of them a certain large amount of collateral, do you not?

Objected to by Mr. Tillinghast as not the best proof, inasmuch as this is a matter of record.

A very long discussion ensued.

Mr. COOMBS: We waive the further examination of Mr. Cross here, and will offer the paper record if that is desired.

223 Mr. DAVIS: I will offer the laws of the State of Massachusetts, heretofore referred to and under which, partially, the claimants base their claim. I understand that in this court no farther proof than the prof-er of the laws of another State is necessary, and that the court takes cognizance of them—I mean the statute laws. If not, I shall desire to put them in.

Mr. TILLINGHAST: I object to this as entirely immaterial at the present time.

Mr. DAVIS: I propose to follow this up with an attempt to show proceedings in the Massachusetts court of insolvency and purchase by Mr. King thereunder.

The COURT: It seems to me that it is relevant and material.

Mr. Tillinghast takes an exception.

Mr. DAVIS: I now offer chapter 157 of the public statutes of Massachusetts and acts amendatory thereof, as being the so-called insolvency act of Massachusetts.

Objected to by Mr. Tillinghast, admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: The acts amendatory thereof are what?

Mr. DAVIS: Here is a copy of the last blue book and the acts and resolves for 1893.

We have first made a general offer of the insolvency law of Massachusetts. The amendatory acts are the act of 1893——

Mr. TILLINGHAST: That I object to. It is the legislation of Massachusetts after this action was brought and cannot affect this case.

224 The COURT: I don't see how laws passed afterwards can affect the matter. I must draw the line at laws in force at the beginning of this suit.

Mr. DAVIS: I offer the Acts of 1890, chapter 420 (objected to by Mr. Tillinghast); 1893, chapter 420; 1893, chapter 372; 1885, chapter

59; 1892, chapter 209; 1887, chapter 340; 1893, chapter 405; 1886, chapter 290; 1884, chapter 293; 1889, chapter 420; 1889, chapter 313; 1890, chapter 420; 1887, chapter 340; 1885, chapter 353, sec. 6; 1884, chapter 236, section 9; 1890, chapter 431; 1893, chapter 405.

The COURT: Now what is the possible relevancy of the amendments made after the commencement of this suit?

Mr. DAVIS: On one phase of our claim, which is that the contracts as to which the garnishees answer indebtedness were made in Massachusetts, with Massachusetts citizens, and they are to be performed and therefore to be governed by Massachusetts laws. We shall submit that it was a condition of that contract, as of all contracts, implied by law, that they were made with reference to Massachusetts statutes and laws and we claim an assignment of that particular indebtedness, claiming title thereto. My offer is, of course, of each and every one of these laws.

The COURT: I think that the laws of Massachusetts prior to the beginning of this suit are admissible; those subsequent to the beginning of this suit are inadmissible. Those prior to the beginning of the suit I rule in and those subsequent to the beginning of this suit I rule out.

Mr. TILLINGHAST: I renew my exception to this ruling,
225 so far as applies to the Massachusetts statutes prior to the suit.

Mr. DAVIS: We save an exception to the ruling out of those subsequent to the beginning of the suit.

Mr. DAVIS: Now we rely particularly upon sections 16, 17, 120, 40, 41, 121, 44, 45, 46, 51, 50, 57, 47, and 109 of chapter 157 of the Public Statutes.

Mr. DAVIS: Now in the additional affidavit of the Lippitt Woolen Company there appears as a part of their affidavit an exemplified copy of the record of a suit in Massachusetts whereof the proceedings in the case of Brown, Steese & Clarke in the insolvency court of Massachusetts, in conformity with the statutes which we have just cited, are a part. If those are already in, and I presume under the statute that they are in, it is not for us to offer proof with regard to them. If they are not in, as to us, then we desire to offer an exemplified copy of the same thing again. I ask your honor's ruling upon whether that is open to us or whether it is in. I should suppose it was in and covered by the affidavit.

The COURT: I don't see why it is not a part of the disclosure. You can offer evidence that does not contradict the disclosure; but where the garnishees' disclosure is already in, I suppose that that is a part. I suppose, therefore, in considering the question of charging the garnishee, we take these disclosures of the various garnishees and such evidence as we may admit as material that is offered outside of the disclosure.

226 Mr. DAVIS: The record of the insolvency court is now a part of the record of the case, then?

The COURT: I so understand it.

Mr. TILLINGHAST: I don't understand that it is in for any other purpose than as a part of the record, for that judgment.

The COURT: You may do, gentlemen, as you see fit. You may offer a new copy, and I shall admit that. If you desire to renew the exception, you can do so.

Mr. COOMBS: We can offer the same thing right over again to cover the point.

(Record of the insolvency court offered.)

Objected to by M. Tillinghast because it is subsequent to this attachment, admitted, and exception taken by Mr. Tillinghast.

Mr. TILLINGHAST: I object to it because it is all subsequent to this attachment.

The COURT: I understand that, but I cannot understand whether it is subsequent to the attachment or not until I see it.

Mr. TILLINGHAST: They now offer a record of proceedings in Massachusetts, commenced and taking effect after the attachment. Upon that ground I object to it. This record shows upon its face that it took effect upon the 23d day of August, 1889. The assignment took effect as of that date. They offer the record based upon that proceeding of that court. That is disclosed by the record, and that is what I call your honor's attention to.

Mr. DAVIS: The debtor's petition is dated August 12th.

227 The COURT: Then I don't see how it is material. If you offer it, showing that, then I should rule it out as immaterial.

Mr. DAVIS: The papers that I have offered I want to read, that it may appear upon the record that they are subsequent to this suit. (Reads:) "Brown, Steese & Clarke's, the debtors' petition in the insolvency proceeding, dated August 10th, 1889, in the case Brown, Steese & Clarke, in insolvency, in Massachusetts. Filed August 12th. Citation issued that day, returnable August 21st, on which the order to messenger was dated the 21st of August, 1889, and whereof the first publication was August 23d, 1889."

The COURT: Give me the section of the Massachusetts law.

Mr. DAVIS: There is that section; but that is not our contention in this case. We do not claim that by reason of this assignment an attachment was vacated. We claim that there never was any attachment or anything else.

The COURT: My ruling would have nothing to do with your claim, but it would be upon the admissibility of the testimony.

Mr. DAVIS: The effect of the assignment is stated in section 46: "An assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken upon execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant." The date of the first publication was August 23d, 1889. The assignment itself was of the date of September 4th. That is our offer.

228 Objected to by Mr. Tillinghast.

(A recess was then taken until two o'clock p. m., at which time a very long discussion was had in regard to the admissibility of the

testimony offered. At the conclusion of the discussion the court said:)

The COURT: I have suggested that the offer be made so that it will distinctly show the dates to which I attach importance. I don't see why or how these bankruptcy proceedings in Massachusetts commenced, when they were with the assignment when it was made and the publication of notice when it was made—I don't see what it has got to do with this case. If it goes in I should brush it aside as so much waste paper and say that it has no weight upon my mind. The Massachusetts law I let in because unless I had the Massachusetts law before me I didn't know exactly how to judge of the importance of the acts done under the Massachusetts law; but when it comes to the assignment, having the knowledge of the Massachusetts law that I already have, I say I don't know how that it is material in Rhode Island, and for that reason I exclude it.

Mr. DAVIS: What I have offered is a duly authenticated and exemplified copy of the papers, the debtor's petition, the order, the assignment, &c., in the insolvency court in Massachusetts.

The court rules out the testimony, and an exception is taken by Mr. Coombs.

229 SATURDAY, *January 6th*, 1894.

GIDEON P. BROWN resumed.

(By Mr. DAVIS:)

Q. Since the former hearing, Mr. Brown, have you made search for the memorandum made by Mr. Purdy with regard to the sales from Brown, Steese & Clarke to the Lippitt Woolen Co.?

A. I have.

Q. What search have you made?

A. Well, I went through a large quantity of papers that had reference to that year's business, commencing on the first of the year and going down as far as August. The greater part of the forenoon I occupied in looking those papers over.

Q. What were those papers?

A. They were papers of no value—papers of Brown, Steese and Clarke.

Q. Relating to their business at this period?

A. Yes, sir; for that year.

Q. Did you find any of the memoranda in question?

A. I did not.

Q. You have testified as to the general form of memorandum, such as was made at this time. When was the memorandum signed, in point of time, with reference to the whole transaction of sale?

Objected to by Mr. Tillinghast.

The COURT: I confess I think your search has been inadequate.

Mr. DAVIS: Then I shall have to ask your honor for a ruling——

230 Q. When was this memorandum which was signed by Mr. Purdy made, in point of time, with relation to the transactions involved in the sales?

Mr. TILLINGHAST: I object. He must get the paper and let it speak for itself. It is only an indirect way of proving the contents of the paper. It has been ruled out once.

Mr. DAVIS: I consider the paper as gone.

The COURT: You have not shown a foundation, as it seems to me, to inquire as to the contents of the paper. If you want an exception you can have it. If you want more time to search, the court proposes to give the counsel an opportunity to put any question that the court may think admissible, and to have it answered in the most satisfactory way.

Mr. DAVIS: We shall search everything in the world pertaining to this subject that we can get at.

(Time for further search allowed.)

Mr. DAVIS: Your honor has never ruled on whether there is any need for a search at all.

Mr. COOMBS: Your honor having allowed us an opportunity to cure our difficulty, there has been running through my mind
231 a question that I am not quite satisfied about. I don't know but that your honor's ruling at the last hearing went deep enough to cut up by the root the thing that we are after here. I had an impression of your honor's ruling that the attachment having been prior to the date of the assignment, your honor did not know as any standing was secured to the assignee at all.

The COURT: That is exactly my idea. I have been somewhat surprised that that question has not been raised this morning.

You file a claim, as claimants of this property, claiming by assignment or otherwise, and you ask the right to intervene. The statute gives to persons laying claim by assignment or otherwise the right to be heard on the question of property. The way that was put to me I confess confused me, and the question was argued as though I was to hear the question piecemeal and determine upon your right to be heard upon the question of property, whether you had any substantial claim or not. Now, I think the court was in error, and I frankly say so, and it is an error the court has fallen into before, because our practice is very loose in this respect, and this is one of the cases where it would come up most notably. The court did hear the testimony, but very confusedly, and it did not put its hand down, as I think it should have done and would do again, and say, "You have the right to be heard." We are not going to determine your question of property, or about assignment, until it comes up on the question of charging the garnishees. When that question comes up, then we will hear all the conflicting
232 claims to this property. It is of no consequence whether it comes up on the garnishees' disclosures or whether it comes up on the testimony offered by the claimants. What we are trying now is the question of property. All the court can do anyway is to either charge or discharge the garnishees. If it charges the garnishees, that is an adverse decision to the claimants, by which they might be aggrieved, and then would have the right to go to the higher court. If the court discharged the garnishees, that would be a ruling, so far as this court could make it, in favor of the claim-

ants. The court heard testimony, indeed, but was not then educated up to the case as it has since been presented—for this is a case bringing education to the court and, I think, to the counsel as well. It certainly was very confused before. The court decided against the claimants and denied the motion; but that motion was not what the court intended to decide. The court intended to say that it did not think that Bullens & Sawyer and Theophilus King, under their representation, were entitled to the property in this garnishee process; but the court appeared to say that it declined to hear Bullens & Sawyer and Theophilus King on the question of property; and, that being so, the court withdrew that rescript and said: "Why, it is our duty to hear Theophilus King and Bullens and Sawyer on the question of property;" and that motion will come up when the motion to charge the garnishees is made. The court does not propose to spend a lot of time under a misapprehension.

233 What I mean to say is that, inasmuch as the date of this advertisement and notice was subsequent to this attachment, the insolvency proceedings in Massachusetts had no effect upon this court whatever and did not pass the claim here.

Now that is the broad ground that the court took, and it meant to take it for this reason, that according to its view, as I stated, you gentlemen would then except properly and naturally to the ruling excluding the testimony; and the court was very particular that you should be precise in the question you asked, so that your question should show the transfer from the assignees, under certain insolvency proceedings in Massachusetts, wherein this notice was given in August, several days after the attachment. Now the court attaches some importance at least to that fact, and whatever might be the standing if that notice had been given before this attachment, it was clear that on the notice given subsequent to the attachment this transfer to Bullens & Sawyer and Theophilus King was invalid to pass title.

The court made this remark to you, that it seemed to the court that you were commencing chronologically wrong. It seems to me that you gentlemen are proceeding chronologically wrong, because if this assignment or transfer from the assignees in Boston did not pass title to Theophilus King and to Bullens & Sawyer, of what earthly account is it where this contract was made or anything about it?

Now if you go to the supreme court and they say, "Judge Rogers erred, and he ought to have allowed you to show these things," either they will send it back with instructions for me to hear

234 that testimony, or they will take such other steps as to make it sure that your rights are preserved.

My theory was that I was making up a more clear-cut record for you by refusing to take this testimony, because then you have got a clear-cut decision of the court that, in its opinion, it has nothing to do with the matter.

Then I get to the first starting point, to wit, an assignment. If

they have not got an assignment, of what earthly consequence is all the rest of it? It cuts under your whole case.

Now, when you take these exceptions and carry the case up to the higher court, I cannot for the life of me see why you have not got every remedy.

Mr. COOMBS: If we could have some ruling, either on an offer or in any other way, that would close categorically that part of it from its inception, it might expedite the result.

The COURT: I declined to admit the proceedings and the record of the proceedings in insolvency in Massachusetts because your question was purposely so framed as to show that the notice was advertised subsequent to the date of this assignment; so the insolvency proceedings that I ruled out were identified, so to speak, and described. There was some inquiry made as to the date. I asked him to look it over, and he said, "The date is the 23d or the 24th of August," subsequent to this assignment. That I ruled against, and you took your exception.

Mr. TILLINGHAST: I objected to every question asked of Mr.
235 Brown and took an exception in each instance. The question was asked distinctly as to the record of the insolvency proceedings, and the ruling was made upon that, and that was the end of it. That carries up everything on that matter.

Mr. COOMBS: Do you make a motion to strike out the testimony of Mr. Brown?

Mr. TILLINGHAST: No; I do not. I have as much as I can do to try one side of the case.

Mr. DAVIS: The court has intimated pretty clearly that it could not see any reason why this testimony that we were offering was not included in the ruling upon the insolvency proceedings. We want to show that the contract of indebtedness that the Lippitt Woolen Company offers was part of the contract, and that it should be governed by the laws of Massachusetts, and that complete jurisdiction had not been obtained over this indebtedness by this court at the time of the insolvency proceedings, and that therefore that indebtedness passed under the insolvency proceedings, and we claim title to it under and by virtue of those proceedings. In other words, it antedated the date of the attachment proceedings. Our contention is that at the time the contract was made it was a contract of such a nature that it would follow, as to its ownership, in accordance with the laws of Massachusetts, and that it did so. Now, that is the object of the testimony that was offered with regard to the nature of the contract with that Lippitt Woolen Company—first, that it was made with reference to the laws of
Massachusetts, and next that it was not due and payable;
236 and, it being the case of an absent defendant, there was nothing for the court to take jurisdiction of. At the time of the first attachment in this case, and before any jurisdiction of the defendant was obtained, these insolvency proceedings were taken, under and by virtue of which the original indebtedness passed. That is our contention in the matter, and that is why we desire to go into

the testimony with regard to the circumstances of the Lippitt Woolen Company's contract with Brown, Steese & Clarke.

Mr. TILLINGHAST: I have made objections to the questions asked of Mr. Brown, and I have made them pretty thoroughly, and if I have not objected to every material question I will object to them now and have my objection ruled upon and take exceptions.

Mr. Tillinghast takes exceptions to the admission of all questions put to Mr. Brown except immaterial questions.

The COURT: The court being of the opinion that the testimony of Mr. Brown referring to the sale of wool to the Lippitt Woolen Company is immaterial, in view of the subsequent development of the matters in hearing, the court revises its rulings as to the objections made by plaintiff's counsel thereto and sustains all said objections. The answers to such questions to Mr. Brown as were thus objected to by plaintiff's counsel are stricken out.

Mr. COOMBS: To which the counsel for the adverse claimant objects. I object to the questions being stricken out. I object to the objections of Mr. Tillinghast, and, those objections being sustained, I take an exception.

237 Mr. COOMBS: We would like to ask Mr. Brown where that contract was to be performed and when the wool was to be paid for.

GIDEON P. BROWN recalled.

(By Mr. COOMBS:)

Q. In the sale of wool to the Lippitt Woolen Company, concerning which you have been questioned, where was the wool sold and where was the wool to be paid for?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Q. When was the contract price or purchase price of the wool payable?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. COOMBS: I offer to prove that the wool was sold in Boston, Massachusetts, and was to be paid for in Boston, Massachusetts, and repeat my question:

Q. Where was the wool sold and where was it to be paid for?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. COOMBS: I offer to show that the price for none of the wool was payable until after the publication of the assignment in the case of Brown, Steese & Clarke; for that purpose I ask:

Q. When was the contract price of the wool payable?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

(By Mr. DAVIS:)

238 Q. Mr. Brown, was your participation in the insolvency proceedings in the case of Brown, Steese & Clarke voluntary or involuntary?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Davis.

(By Mr. DAVIS:)

Q. Were there any other notes of Brown, Steese & Clarke held by the International Trust Company, with collateral attached, similar in their terms to the notes now in suit held by Mr. Cross?

Objected to by Mr. Tillinghast and admitted.

A. I don't know; I can't remember.

Mr. DAVIS: I want to make sure that the record will show that the record of the insolvency court in Massachusetts, which we offered at the last hearing and which your honor excluded, was a duly authenticated record of the court.

The COURT: That is what I meant to rule out, so as to show that the proceedings in bankruptcy that you offered were the proceedings wherein the notice was published and the publication of the notice was after the attachment.

Mr. DAVIS: And that was a duly authenticated record which we offered.

Mr. DAVIS: I offer a duly exemplified and authenticated record of the insolvency court of the county of Norfolk, of the Commonwealth of Massachusetts, of the debtor's petition and citation in the case of Brown, Steese & Clarke, insolvent debtors, filed August 12th, 1889; of the warrant in the same case, with the return thereon; of the assignment in the same case to the assignees, dated the
239 4th of September, 1889, all being annexed to the petition of T. King as adverse claimant.

Objected to by Mr. Tillinghast, ruled out, and exception taken by Messrs. Coombs & Davis.

Mr. DAVIS: We now offer a conveyance by the assignees in insolvency of Brown, Steese & Clarke, in Massachusetts, to Theophilus King of the claims of Brown, Steese & Clarke against the Lippitt Company and the Wanskuck Company, and also the sale by the same assignees to Messrs. Bullens & Sawyer, trustees for the purchase of the claim of Brown, Steese & Clarke against the Riverside and Oswego mills, under which these respective adverse claimants claim title to the property here garnished, offering both the duly authenticated and exemplified copy of the record of the court of insolvency for the county of Norfolk and Commonwealth of Massachusetts, of the prayer of the assignees in insolvency of Brown, Steese and Clarke for leave to make this sale, with the decree of the court thereon, and the instruments: that as to the sale to Bullens & Sawyer being allowed November 19, 1890, and marked on the back "A" in ink; that to Theophilus King being undated, but the decree

being allowed November 19th, 1890, and endorsed on the back "B" in ink, and the original instruments of conveyance from the assignees in insolvency to Bullens & Sawyer and Theophilus King made in accordance therewith; that to Bullens & Sawyer being marked on the back "C" in ink and dated the — day of ——, 1890, and that to Theophilus King being dated the 19th of November, 1890, and marked on the back "D."

240 All objected to by Mr. Tillinghast, ruled out, and exception taken by Messrs. Coombs and Davis.

Mr. DAVIS: I offer the authenticated and exemplified record of the court of insolvency of the county of Norfolk, Commonwealth of Massachusetts, of the proof of claim made in the case of Brown, Steese & Clarke by the International Trust Company of Boston, it being in two proofs, the first being sworn to May 29th, 1890, and the second sworn to March 3d, 1890, marked "E" in red ink.

Admitted and put in.

JOHN A. CROSS recalled.

(By Mr. COOMBS:)

Q. Were you aware that under the laws of Massachusetts the negotiable life of a note payable on demand is 60 days?

Objected to by Mr. Tillinghast, ruled out, and exception taken by Mr. Coombs.

Mr. TILLINGHAST: I object to the form of the question as well as the substance. We cannot incorporate the law of Massachusetts in that way, and I do not assent to its being the law of Massachusetts. I object to the question on the ground that it assumes something to be the law of Massachusetts which is not in proof and not admitted, and also because it is immaterial and inadmissible in this case.

Q. In one of these notes, dated May 7th, 1889, it purports to contain collateral in two notes, one reading "Note, Atlantic, May
241 7th, four months, $10,000," and endorsed "Owen Brothers," and also, in ink, right under that, "Note, Atlantic, April, five months, $10,000." Did you receive that collateral with that note?

Objected to by Mr. Tillinghast and admitted.

A. I did not.

Q. The other note, dated April 9th, 1889, being for $20,000, purports to be secured by business paper—Hollis, $10,000; Phenix Wool Company, $7,636.63; Philbric, $2,500; McIntosh, $5,000. Did you receive that collateral with that note?

A. I did not.

Q. Did you ever hold any promissory notes of Brown, Steese & Clarke before these?

Objected to by Mr. Tillinghast as immaterial, ruled out, and exception taken by Mr. Coombs.

Allowed March 29, 1895.

(S'g'd) HORATIO ROGERS,
J. S. C., C. P. Div.

242 (*Copy of Certified Copy of Opinion of Appellate Division. Original Opinion Filed in Appellate Division October* 28, 1895; *Certified Copy Filed in Common Pleas Division October* 1, 1897.)

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE.

Opinion.

TILLINGHAST, *J.*:

This is assumpsit upon two promissory notes made by the defendants at Boston, in the State of Massachusetts, on the 9th day of April, 1889, and the 7th day of May, 1889, respectively, and payable to the order of the International Trust Company, at its place of business in said Boston, and by said International Trust Company endorsed and delivered to the plaintiff. The said International Trust Company is a Massachusetts corporation.

The writ, wherein John A. Cross, of Providence, was plaintiff and Gideon P. Brown, of Boston; Edward Steese, and Amasa Clarke, of Brookline, all in the State of Massachusetts, copartners under the firm name of Brown, Steese & Clarke, were defendants, was sued out of the court of common pleas in the county of Providence August 13, 1889, and was served by trustee process on the same day upon the Lippitt Woolen Company, the Riverside & Oswego mills, and the Wanskuck Company, each being a corporation of this State, and was also further served on August 15, 1889, by trustee
243 process upon the assignees of said Riverside & Oswego mills, and by sending a copy of the writ by mail to the address of each of the said defendants. At the time of the commencement of said suit and of the insolvency proceedings hereinafter mentioned, the defendants, Brown, Steese & Clarke, were creditors of said Lippitt Woolen Company, the Riverside & Oswego mills, and the Wanskuck Company. The indebtedness of the Lippitt Woolen Company was on a contract for the sale of wool, made in Boston, where the wool was delivered and where the purchase price for the same was payable when it should become due. At the time of the alleged garnishment, however, said indebtedness had not become due and payable and did not until September 12, 1889.

Subsequent to the service of said writ on the Riverside & Oswego mills, but on the same day, this corporation made a general assignment of all its property to Charles D. Owen, of Rhode Island; Chester A. Braman, of the city and State of New York, and James B. Case, of Webster, in the State of Massachusetts, in trust for the equal benefit of all its creditors, excepting its employees, the wages of whom for labor performed within six months prior to said assignment, not exceeding, however, the sum of one hundred dollars to any one person, were preferred. January 7, 1890, the defendants appeared and pleaded the general issue, and on trial to a jury, on March 30, 1890, a verdict was rendered for the plaintiff for $41,534.27,

which verdict this court, on a petition for a new trial, subse-
244 quently filed, refused to disturb. Said Brown, Steese & Clarke failed in the early part of August, 1889, and on the 12th of the same month two members of the firm applied by a voluntary petition to the judge of the court of insolvency in and for the county of Norfolk, Massachusetts, setting forth their inability to pay all their debts and their willingness to assign all their estate and effects for the benefit of their creditors, and praying that such proceedings might be had as were provided by cap. 157 of the Mass. Pub. Stat., viz., the insolvency laws of that State.

Sec. 46 of such chapter provides as follows: "The assignment shall vest in the assignee all the property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant in case of voluntary proceedings, and at the time of the first publication of notice of the filing of the petition in cases of involuntary proceedings, and shall be effectual, subject to the provisions of the following section, to dissolve any attachment on mesne process made not more than four months prior to the time of the first publication aforesaid. The assignment shall vest in the assignee all debts due to the debtor or any person for his use, and all liens and securities therefor, and all his rights of action for goods or estate, real or personal, and all his rights of redeeming such goods or estate."

245 The first publication of notice of the insolvency proceedings referred to was made on August 23, 1889, and on September 4, 1889, the assignment was made by the judge of insolvency under the provisions of said law. No assignment was made by the insolvents themselves.

The assignees of Brown, Steese & Clarke, by virtue of the assignment to them, as aforesaid, and of the provisions of said insolvency laws of Massachusetts, duly purported to sell and assign the claims of said firm against the Lippitt Woolen Company and the Wanskuck Company to Theophilus King, a citizen and resident of Massachusetts, who, as shown by the duly authenticated record, as such purchaser and under and by virtue of § 109 of said cap. 157 of the Mass. Statutes, brought suit in his own name in that State against the Lippitt Woolen Company on its obligation under said contract, setting forth the fact of the sale and of the purchase by him in the writ, and recovered judgment against the Lippitt Woolen Company, notwithstanding said company appeared and fully set out in said proceedings the garnishment proceedings in the case now before us.

Under and by virtue of cap. 433 of the Pub. Laws of R. I. the said King was allowed to become a party to this action as adverse claimant, which he did, setting up the insolvency laws and proceedings thereunder in Massachusetts and the assignment to him thereunder as aforesaid, and also setting up his judgment against the Lippitt Woolen Company. He also offered to show that this
246 is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only and

in the interest, for the benefit, and in behalf of the International Trust Company of Boston. Bullens & Sawyer were also allowed to become a party to the suit as the claimant of all the property and estate of the defendants in the hands of the Riverside & Oswego mills, they claiming said property by virtue of an assignment to them from the assignees in insolvency in Massachusetts of said Brown, Steese & Clarke.

The various parties served with copies of the writ, for the purpose of attaching by trustee process the defendant's property in their hands, filed disclosures in said court of common pleas and in the common pleas division of the supreme court, which took cognizance of the case after the passage of the judiciary act, which disclosures will hereinafter be considered; numerous interrogatories and cross-interrogatories were filed and answered in connection therewith; said claimants of the property attached were fully heard, and the case as a whole was tried at great length, and finally, after diligent consideration thereof by Rogers, J., presiding in said division, a decision was rendered charging the said Lippitt Woolen Company, as garnishee, in the sum of $11,938.39, the same being the amount disclosed in its affidavit, together with interest thereon from September 12, 1889, and declining to charge the other garnishees. The case is now before us on two petitions for a new trial, one being
247 filed by the plaintiff and one by the said Lippitt Woolen Company, trustee, and Theophilus King, as adverse claimant.

The plaintiff's petition is based upon certain alleged erroneous rulings of the court in regard to the admission and rejection of evidence; in the admission of supplemental affidavits or disclosures by the garnishees; in admitting said Theophilus King and Bullens & Sawyer respectively as claimants of the property attached and as parties to the case, upon their intervening petitions therein filed; in refusing to summon in the prior attaching creditors of the property in question; in declining to charge the assignees of the Riverside & Oswego mills as trustees, and in declining to charge the Wanskuck Company and the Riverside & Oswego mills as garnishees.

The numerous grounds of the petition of said Lippitt Woolen Company and of Theophilus King, adverse claimant, for a new trial, briefly stated, are that the common pleas division erred in charging said Lippitt Woolen Company, as trustee, and, even if chargeable at all, in charging it with interest on the amount disclosed; in its rulings as to the admission and rejection of evidence, and in its rulings and decisions as to the faith and credit to be given to the record and proceedings of the Massachusetts court of insolvency, and also of the superior court of that State. We will consider both of said petitions together.

248 The first question which logically presents itself in connection with the petition for a new trial, filed by said Lippitt Woolen Company and said claimant, is that of jurisdiction over the fund or property in question, for it is clear that jurisdiction over the principal defendants was obtained by their voluntary appearance in the case. The answer to this question depends upon the

situs of the property sought to be attached. If it was in this State, as contended by the plaintiff, the court obtained jurisdiction; but if it was in Massachusetts, as contended by the Lippitt Woolen Company and the claimant, then the court did not obtain jurisdiction, for it is an elementary principle of law that jurisdiction, to be rightfully exercised, must be founded upon the presence of the person or thing in respect to which the jurisdiction is exerted within the territory. Plympton *v.* Bigelow, 93 N. Y., 597.

In order to make a valid seizure, then, by process of attachment, whether of tangible or intangible property or interest, the *res* must be within the territorial jurisdiction—that is, if the *res* consists of visible and tangible property, it must be found and seized within the State, and if it consists of a mere debt or chose in action, then its situs must be there.

Now it is evident that a chose in action, being an intangible chattel, cannot, strictly speaking, have a physical location. Its locus or situs is, therefore, a legal fiction, and, being so, it
249 may have a different situs for different purposes—that is, a constitutional situs. Thus, the situs thereof for the purposes of taxation is the domicile of the creditor or payee of the debt. For the purposes of administration, so far as the non-resident creditor is concerned, it is also at his domicile; but, so far as the remedy of the creditors of the payee of the debt is concerned, the authorities are very uniformly to the effect that the situs of the debt is at the domicile of the debtor, and that wherever the creditor might maintain a suit to recover the debt, there it may be attached as his property, provided the laws of the forum authorize it; or, as said by Shiras, J., in Mason *v.* Beebe, 44 Fed. Rep., 559, "The situs of property for the purpose of jurisdiction is one thing, and its situs for the purposes of determining the right of the parties thereto is another, and the two are not necessarily the same."

In a late case decided by the supreme court of Minnesota this doctrine is thus concisely stated by Mitchell, J.: "While by a fiction of law a debt, like other personal property, is for most purposes, as, for example, transmission and succession, deemed attached to the person of the owner, so as to have its situs at his domicile, yet this fiction always yields to the laws for attaching the property of non-residents, because such laws necessarily assume that the property has a situs distinct from the owner's domicile. For such purposes a debt has a situs wherever a debtor or his property can be found. Wherever the creditor might maintain his suit to recover the
250 debt, there it may be attached as his property, provided, of course, the laws of the forum authorize it." Harvey *v.* Great Northern R. W. Co., 50 Minn., 406; Blake *v.* Williams, 6 Pick., 285–315; Lewis *v.* Bush, 30 Minn., 247; Drake on Attachm., § 597. In Neufelder *v.* Insurance Co., 22 L. R. A., 290, the court say: "Although the situs of intangible personal property may be at the domicile of the creditor for the purpose of taxation or distribution, yet for the purpose of collection a debt is ambulatory and accompanies the person of the debtor." While, therefore, it is a general rule that personal property follows the person of the owner and is

governed by the laws of his domicile, yet this rule is subject to certain exceptions, and one of these exceptions is that the *lex rei sitæ* regulates the legal remedy. Blanchard *v.* Russell, 13 Mass., 5.

Attachment laws, as said in Green *v.* Van Buskirk, 7 Wall., 139, "necessarily assume that property has a situs entirely distinct from the owner's domicile." The plaintiff occupies, as against the garnishee, the position of the defendant, with no more rights than the defendant had, and liable to be met by any defence which the garnishee might make against an action by the defendant. See also Strong *v.* Smith, 1 Met., 476; Campbell *v.* Nesbitt, 7 Neb., 300; Drake, Attachm., 6 ed., 452.

If this be so, and we see no reason to doubt its correctness, it follows that as the defendants Brown, Steese & Clarke could have maintained an action against the garnishees in this State for
251 the recovery of the debts in question, then said debt was within this State and subject to an attachment here. See also Bragg *v.* Gaynor *et als.*, 85 Wis., 468; Wyeth Hardware Mfg. Co. *v.* Lang *et al.*, 29 S. W. Rep., 1010; Berry Bros. *v.* Davis, 77 Tex., 191; Harwell *v.* Sharpe, 85 Ga., 124; Hull *v.* Blake, 13 Mass., 153; Insurance Co. *v.* Portsmouth, 3 Met., 420; Nat. Fire Ins. Co. *v.* Chambers *et al.*, 32 Atl. Rep., 663; Mason *v.* Beebe, 44 Fed. Rep., 556; H. & St. J. R. R. Co. *v.* Crane, 102 Ill., 258.

Nor is it material in a proceeding of this sort, where the creditor's remedies are concerned, that the debt is payable at the domicile of the payee, it being well settled that "where the garnishee is indebted it will not vary his liability that his contract with the defendant is to pay the money in another State or country than that in which the attachment is pending." Drake, Attachm., 597, and cases cited.

The debt of the garnishee to the defendants in the case at bar, although payable in Massachusetts, was yet a debt everywhere—in whatever country its person or property might be found—and hence a suit for the recovery thereof, as we have already said, could have been prosecuted in the courts of this State. See Sturtevant *v.* Robinson, 18 Pick., 175; Nichols *v.* Hooper, 61 Vt., 295; Leiber *v.* Railroad Co., 49 Ia., 668.

The counsel for the said garnishee and claimant, while they have not furnished us with much judicial authority to the contrary of the foregoing doctrine, have presented a very elaborate and
252 learned argument in support of their contention that said debt or pecuniary obligation could not be made the subject of a proceeding *quasi in rem* in this State, (*a*) because it had no situs at the domicile of the debtor and was not property here over which the legislature and courts of this State had dominion and control, and (*b*) because if it had been property here the court could not have discharged the debt as against the non-resident owners not personally subject to the control and jurisdiction of the court without impairing the obligation of contract.

In support of their contention that the situs of the debt was not here, but was at the domicile of the payees thereof, counsel have cited and elaborated numerous cases on taxation, both in the State

and Federal courts, which hold with great unanimity that, for the purposes of taxation, personal property of the kind in question follows the person and has its situs at his domicile, and that only the tangible property of a non-resident is subject to the taxing power of a State, and they earnestly argue that these cases are directly in point and decisive of the question at issue, the sovereign power of a State being best illustrated and most accurately defined by cases on taxation.

It is undoubtedly true that the jurisdiction of the State for purposes of taxation cannot be held to extend to the property which a non-resident has in a debt which he holds against a resident. For, as said by Judge Cooley, in his valuable work on taxation, "the State has no jurisdiction to assess a tax as a personal charge
253 against a non-resident; neither can the personal estate of a non-resident be taxed unless it has an actual situs within the State, so as to be under the jurisdiction of its laws. The mere right of a foreign creditor to receive from his debtor within the State the payment of his demand cannot be subjected to taxation within the State. It is a right that is personal to the creditor where he resides, and the residence or place of business of his debtor is immaterial. The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. The subjects are persons, property, and business. Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them, the taxation may be exercised in a great variety of ways. * * * The creditor cannot be taxed, because he is not within the jurisdiction, and the debts cannot be taxed in the debtor's hands, through any fiction of law which is to treat them as being, for this purpose, the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors, and only possess value in the hands of the creditors." Cooley on Taxation, 2 ed., 21, '2.

But, conceding that the State has no power to tax a mere chose in action belonging to a non-resident, does it therefore follow that it cannot authorize an attachment thereof by process of garnish-
254 ment; or, in other words, may not the debt, which is an intangible thing, have a situs at the domicile of the creditor for the purpose of taxation, and also at the domicile of the debtor for the purpose of attachment? We see no reason why it may not, and the authorities above cited, together with many others which might be added, fully support the view that it may. Moreover, for us to hold that a debt due to a non-resident is not attachable by trustee process here would be both to render our statutes relating to foreign attachment largely null and void and also to overrule the settled practice of the court from time immemorial. Indeed, until a comparatively recent date, an action could not be commenced by garnishment unless the defendant was out of the State. Cottle *v.* Am. Screw Co., 13 R. I., 627.

But the counsel for said trustees and said claimant further urge,

in support of their contention that said statute is unconstitutional, that the statute of the State, being without force in any other State, cannot discharge a debt held by a citizen of another State; and in this connection they have referred us to numerous cases bearing upon the question of the effect of discharges in insolvency under State insolvency laws.

The general doctrine for which counsel contend is this: That the insolvency laws of one State have no effect against the citizens of another State holding claims that follow the person of a creditor, no matter where the debt was contracted or where it was made payable, unless they place themselves under the jurisdiction of the
255 law by voluntarily becoming parties to the insolvency proceedings.

That the statute laws of a State can have no extraterritorial operation or force is everywhere admitted, for it goes without saying that, each State being an independent sovereignty, subject only to the limitations of the Constitution of the United States, no State can legislate with regard to the rights of citizens of another State except and in so far as such citizens or their property are found within the territorial limits of the State where the law is passed. See Gilman *v.* Lockwood. 4 Wall., 409; Denney *v.* Bennett, 128 U. S., 489; Green *v.* Sarmiento, 10 Fed. Cases, 1117.

We fail to see the pertinency of this doctrine, however, to the case before us, for here, as we have already seen, the debt sought to be affected is within the jurisdiction of this court. The *res* is here, and this is a proceeding *quasi in rem* to reach and appropriate that *res* to the payment of the judgment debt of the defendants. In a word, it is compelling the payment of the defendants' debt out of their property found in this State.

As to the second point made by the counsel for said trustees and the adverse claimant, viz., that if the debt was property here the court could not discharge it as against the non-resident owners thereof not personally subject to the jurisdiction of the court without impairing the obligation of contract.

The position thus taken, as we understand it, amounts to
256 this, viz., that our statute which provides that "any trustee, after final judgment or decree against the defendant, may satisfy such judgment or decree, or any part thereof, to the amount of the estate attached in his hands, before any suit shall be brought against him therefor; and such payment shall avail for his discharge as against both plaintiff and defendant for the amount thereof," is unconstitutional in so far as it affects debts due to non-residents, in that it deprives the owners of their property in the debt without due process of law.

But what is due process of law except the observance of those general rules established in our system of jurisprudence for the security of private rights, *i. e.*, a trial or proceeding in which the rights of the parties, after notice and opportunity to be heard shall have been duly given, shall be decided by a tribunal appointed by law and governed by the rules of law previously established? Kilburn *v.* Thompson, 193 U. S., 78; Hagar *v.* District, &c., 111 U. S., 708.

For, as forcibly stated by Mr. Webster in the famous Dartmouth College case, "By the law of the land is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

A valid attachment by trustee process creates a lien upon the debt in the hands of the trustee in favor of the attaching creditor. Blake *v.* Williams, 6 Pick., 303. See also Eddy *v.* O'Hara,
257 132 Mass., 56; McConnell on Trustee Process, § 297, and cases. And where such trustee is compelled by due process of law to pay a debt due to A, his creditor, to B, a creditor of A, who had thus attached it in his hands and possession, such payment operates as a full discharge of the debtor's liability to the extent of the amount paid, and is everywhere pleadable in bar of any suit which the creditor might subsequently bring for the recovery of such debt. As said by this court in Alves *v.* Barber, 17 R. I., 714, regarding the effect of a judgment charging the garnishee, "It practically divested the title of the defendant in that suit, the present plaintiff, to the money in the hands of the trustee and transferred it to the plaintiffs, so that in legal contemplation it was applied to the payment of the plaintiffs' judgment against the defendant, the trustee being authorized to pay it over to the plaintiffs and be discharged as against both plaintiffs and defendant for the amount so paid." See also Abbott *v.* Davidson, Index L. L., 84. Indeed, it has been held that where there is a subsisting judgment against a trustee it constitutes a good defence for him in an action by his principal against him for the same cause of action without proof of satisfaction. See McAllister *v.* Brooks, 22 Me., 80, and cases cited.

A chose in action is arrested by this process of garnishment and made to answer the debt of the principal.

But how does our statute above quoted relating to the discharge of the debt due from the garnishee to the principal defend-
258 ant impair the obligation of contract? And in this connection it may be useful to inquire what the contract in question was. It was this: The principal defendants sold and delivered wool in Boston to the Lippitt Woolen Company, the payment thereof to be made in Boston. Before the time for payment had arrived the plaintiff attached the debt by trustee process and is seeking to compel payment thereof to him as a creditor of the principal defendants, instead of making such payment to them—that is, he is seeking in effect by operation of law to transfer the indebtedness of the trustees from the principal defendants to him. Now, suppose that to be done, as it practically is when the trustee proceedings are regular, and a judgment is obtained against the trustee for the amount of the debt in his hands, is it not perfectly obvious that a satisfaction of that judgment *ipso facto* discharges the obligation of the trustee, who is the debtor, to the principal defendants? The judgment, if binding on the trustee, is also binding on the principal defendants and all parties in privity with either, and the satisfaction of the judgment against the trustee is an extinguishment of his debt to his principal creditor and has precisely the same effect as if it were paid to the creditor directly. As stated in Wade

on Attachment, vol. 2, § 503, "The question to be determined is whether the debt has been satified and the extent of such satisfaction, and it matters not by whom it has been paid nor to whom
paid, provided it be to one who is entitled to receive it from
259 the one who pays it; hence where one of several joint debtors
in the garnishment proceeding has paid the debt for which the judgment was obtained it will be for the benefit of his codebtors, each of whom may rely on it as a defence to a subsequent action by the original creditor."

Said statute, then, in so far as it provides that the trustee, after final judgment against the defendant, may satisfy the same, and that the payment thereof shall discharge him from his debt to the principal defendant, is simply declarative of the legal status of the parties to the contract out of which the original indebtedness arose after such change of title to it has been affected by the process of garnishment, and it bears no analogy to the provision for the discharge of a debtor under State insolvency laws as affecting non-resident creditors. In other words, it is not the statute which discharges the debt due from the trustee to the principal defendants at all, but it is the payment of the debt to the attaching plaintiff in satisfaction of his judgment against the principal defendants. This is what works a discharge of the debt. See McConnell on Trustee Process, §§ 295–'7 & 483, and cases cited. And if it be an impairment of the obligation of contract in this case to compel the debtor to pay the debt in question to the attaching plaintiff instead of to the principal defendants, to whom the contract made it payable, and upon such payment to be discharged from its obligation to the said defendants as to the amount so paid, then we do not see why
all foreign attachment laws whereby a debtor is compelled to
260 pay a debt due to a non-resident creditor to the attaching
plaintiff in a proceeding of this sort are not unconstitutional and void.

In the leading case of Embree *et al. v.* Hanna, 5 Johns., 101, Chief Justice Kent said: "Nothing can be more clearly just than that a person who has been compelled by a competent jurisdiction to pay a debt once should not be compelled to pay it over again. It has accordingly been a settled and acknowledged principle in the English courts that where a debt has been recovered of the debtor under this process of foreign attachment in any English colony or in these United States the recovery is a protection in England to the garnishee against the original creditor and he may plead it in bar."

* * * * * * *

"If, then, the defendant would have been protected under the recovery had by virtue of the attachment and could have pleaded such recovery in bar, the same principle will support a plea in abatement of an attachment pending and commenced prior to the present suit. The attachment of the debt in the hands of the defendant fixed it there in favor of the attaching creditors, and the defendant could not afterwards lawfully pay it over to the plaintiff. The attaching creditors acquired a lien upon the debt binding upon

the defendant and which the courts of all other governments, if they recognize such proceedings at all, cannot fail to regard." See also Jarvis *v.* Mitchell, trustee, 99 Mass., 531.

261 But the counsel for said Lippitt Woolen Company further contend that, even if the legislature of this State might, for the purpose of attachment, change the ordinary situs and establish a local situs at the domicile of the debtors within the State for a debt due to a non-resident who is not subject to its jurisdiction or control, the attachment laws of the State have nowhere declared or attempted to establish any such local situs or to change the ordinary situs of such debts, nor do they purport to authorize an attachment of property which a non-resident has in a debt which he holds against a resident.

It is true that we have no statute which in express terms authorizes an attachment against a non-resident, but we think there can be no question that our attachment laws are broad enough to include attachments of this sort. § 14, cap. 32, of the judiciary act provides that "An original writ commanding the attachment of the real or personal estate of the defendant, including his personal estate in the hands or possession of any person, copartnership, or corporation, as the trustee of the defendant, and his stock or shares in any banking association or other incorporated company, may be issued from the common pleas division of the supreme court or any district court, whenever the plaintiff in the action to be commenced by such writ, his agent or attorney, shall make affidavit," &c. § 20, cap. 33, provides for the manner of service of the writ, including the service upon a non-resident defendant, and § 2 of cap. 19 of said act

262 provides for the continuance of a case commenced by foreign attachment where the defendant is a non-resident and fails to answer within the regular time limited therefor. With these provisions in view, taken in connection with the settled and heretofore unquestioned practice of the court thereunder, it is hardly necessary to argue in favor of the authority to attach a debt due to a non-resident.

Another question and one of vital importance is raised by the counsel for said Lippitt Woolen Company and for the claimant King, viz., as to the effect of the said insolvency proceedings in Massachusetts. It is strongly urged that the rulings of the common pleas division fixing August 23, 1889, the date of the first publication of notice in said proceedings, as the date decisive of the question of the effect on the debt in question of the Massachusetts assignment are erroneous. The contention is that by filing the voluntary petition, hereinbefore referred to, on August 12th (one day before the issuing of the writ in this action) the defendants submitted themselves and their property to the jurisdiction of the court of insolvency at that time.

The first inquiry which logically arises regarding this branch of the case is, Did this court or the Massachusetts court first obtain jurisdiction of the debt in question? for it is undoubtedly the law that whichever first obtained general jurisdiction will hold the same

to the exclusion of the other. Under the Massachusetts
263 statute hereinbefore quoted the insolvency proceedings date from the first publication of notice. The notice in the proceedings instituted by the defendants was first published on August 23, 1889, but ten days prior to that time, viz., August 13, 1889, the said debt had been attached here, and our courts had thereby obtained jurisdiction over it.

But the counsel still further urge that, even conceding that the date of the assignment itself, which was September 4, 1889, is the date which is to be decisive on the question of jurisdiction, still the Massachusetts court first obtained it, because, in so far as said debt was property, it was property exclusively within the dominion and jurisdiction of the legislature and courts of Massachusetts. As we have already decided that this position is not tenable, we need not consider it further; but, independent of the fact that the attachment preceded the first publication of notice, and also the making of the assignment, and even though the insolvency proceedings as finally consummated shall be held by relation to have taken effect as of the 12th day of August, 1889, the day on which said petition was filed, still we do not think that said proceedings can be held to so affect the debt in question as to take away the jurisdiction of this court, and primarily for the reason that said assignment was not the personal act of Brown, Steese & Clarke. In other words, notwithstanding the fact that the said insolvency proceedings were set in motion by a part of the
264 debtors, viz., Steese and Clarke, or even by all of them, yet said proceedings are to be regarded as involuntary, the test being whether the insolvency system provides for compulsory proof of the debts under penalty of losing them by the discharge of the debtors from all liability therefor, and this the Massachusetts statutes clearly require. Admitting that the general rule is that a transfer of personal property by the owner thereof is governed by the law of the domicile of the owner, and also that this rule applies to voluntary assignments for the benefit of creditors, and that the title of the assignee thereunder, if valid by the law of the domicile, will prevail against the lien of an attachment made in another State, subsequent to such assignment in favor of a creditor there, upon a debt belonging to the assignor and embraced in the assignment—Noble *v.* Smith, 6 R. I., 447—yet this rule, as said by Andrews, C. J., in Barth *v.* Backus *et al.*, 140 N. Y., 235, "is subject to a qualification, established in the jurisprudence of the American States, that a title to personal property acquired *in invitum* under foreign insolvent or bankruptcy laws, good according to the law of the jurisdiction where the proceedings were taken, will not be recognized in another jurisdiction where it comes in contact with the rights of creditors pursuing their remedy there against the property of the debtor, although the proceedings were instituted subsequent to and with notice of the transfer in insolvency. This exception proceeds upon the view that to give effect to such a transfer arising by operation of law
265 and not based upon the voluntary exercise by the owner of the *jus disponendi*, would be to give the foreign law an extra-

territorial operation which the rule of comity ought not to permit to the prejudice of suitors of another jurisdiction."

Insolvency proceedings similar to these in the case at bar have repeatedly and almost uniformly been held not to affect an attachment made subsequent thereto in another State. See Goodsell *v.* Benson, 13 R. I., 225; Sturtevant *v.* Almsly, 23 Atl. Rep., 368; Rahn *v.* Pearce, 110 Ill., 350; Townsend *v.* Coxe *et al.*, 37 N. E. Rep., 689; Felch *v.* Bugbee, 48 Me., 18; Dunlap *v.* Rogers, 47 N. H., 281; Harrison *v.* Sterry, 5 Cranch., 289; Reynolds *v.* Addan, 136 U. S., 348; Paine *v.* Lester, 44 Conn, 197; McClure *v.* Campbell, 71 Wis., 350; *In re* Waite, 99 N. Y., 433; Crapo *v.* Kelley, 16 Wall., 610; Fox *v.* Adams, 5 Greenleaf, 254. We are therefore of the opinion that said insolvency proceedings in Massachusetts did not take away or have any effect upon the jurisdiction of the courts of this State over the debt in question, and, being of this opinion, it obviously becomes unnecessary for us to consider the title to said debt which is set up by the adverse claimants, as their title is based solely upon said insolvency proceedings and the conveyances made thereunder. It also becomes unnecessary for the same reason to consider the question, which was very learnedly argued by counsel, as to the "full faith and credit" to which the judicial proceedings in the superior court of Massachusetts, hereinbefore referred to, are entitled in this State.

266 The counsel for said Lippitt Woolen Company and the adverse claimant further contend that said debt was not attachable, because by the terms of the contract out of which it arose it was not due and payable at the date of such attachment, and that, as the principal defendants had no present right of action in Rhode Island against their debtors, the trustees, to hold that a garnishment can be maintained would be to place the plaintiffs in a better position than the principal defendants occupied. It is doubtless true, as a general rule, that the plaintiff in trustee process is not to be placed in a better position than the principal defendants with regard to the debt in question. Waldron *v.* Wilcox, 13 R. I., 518; Brown *v.* Collins, Index M. M., 9. But this rule, like most others, is subject to several exceptions (Wade on Attachm., vol. 2, § 327), one of which is that where the trustee owes a debt to the principal defendant, which debt is not subject to any contingency, it is liable to attachment by trustee process, notwithstanding the fact that it is not then due and payable, so as to enable the owner thereof to maintain a suit for its recovery—that is, if the debt is payable absolutely it may be attached though *solvendum in futuro*. This doctrine is so well established everywhere, excepting, perhaps, in the State of Tennessee (see Childress *v.* Dickens, 8 Yerger, 113; McMinn *v.* Hall, 2 Tenn., 328), as hardly to call for the citation of authorities in support thereof. If any are necessary, however, see Smith *v.*

267 Millett, 11 R. I., 535; Stone *v.* Hodges, 14 Pick., 81; Telles *v.* Lynde, 47 Fed. Rep., 917; Fulweiln *v.* Hughes, 17 Penn. St., 447; Sayward *v.* Dunn, 6 Me., 263; Drake on Attachm., 6 ed., §§ 541 & 557, and cases cited; Wade on Attachm., vol. 2, § 484.

Another point upon which counsel for the adverse claimant,

King, rely is that the common pleas division erred in ruling out the evidence offered by him for the purpose of showing that this is not a suit brought in good faith by a citizen of Rhode Island for his own benefit, but that it is colorable only, and in fact in the interest of the International Trust Company of Boston. To this it may be replied, first, that it is wholly immaterial whether the plaintiff was in fact the owner of the notes upon which the suit was based or simply had them in his hands for collection; for, being negotiable promissory notes, payable to said trust company and by it endorsed and delivered to the plaintiff, he unquestionably had the right to sue thereon—Bank of America *v.* Senior, 11 R. I., 376; and, second, that the common pleas division had no jurisdiction to inquire into the *bona fides* of the said suit at law, for the very conclusive reason that all questions relating to said notes and the plaintiff's right to sue thereon had become *res judicata* by the proceedings hereinbefore referred to; and, therefore, to have admitted the evidence offered by the claimant would have been in effect to allow a stranger to the suit to impeach the judgment rendered
268 therein.

The last ground upon which said Lippitt Woolen Company and the claimant King ask for a new trial is that the common pleas division wrongfully charged said Lippitt Woolen Company, as garnishee, with interest on the amount of its indebtedness to the principal defendants. The argument in support of this contention is, in substance, that the Lippitt Woolen Company had no specific moneys in its hands belonging to the principal defendants, either in trust or on special deposit or otherwise, but that it was simply indebted to them for the wool it had purchased; that any money with which it might satisfy said indebtedness was its own money, and if it is chargeable with interest it is simply because it has detained the debt since it became due and payable. The facts relating to this branch of the case, as shown by the sworn answers of said Lippitt Woolen Company, are that it has never made any special deposit of the amount disclosed in its original affidavit as due from it to the principal defendants; that it has never set apart said sum; that it is impossible to state how its use of the money due from it, as aforesaid, has been changed in consequence of the service of the plaintiff's writ upon it; that it has used all its money as it has seen fit, from time to time, without distinction, and that at the time of the service of the writ in this case its moneys were in various banks and in the hands of various individuals, and has fluctuated in amount from time to time since then, according to the necessities of its business.

269 The question as to whether the garnishee shall be required to pay interest on its debt due to the principal defendant during the time he is restrained by the attachment from paying the debt is one which has been much discussed and upon which the decided cases are not in accord. One line of authorities holds that where the garnishee is indebted to the principal defendant upon a demand where interest would be recoverable by the principal defendant only as damages for breach of contract, interest will not be

deemed to accrue during the pendency of the trustee process. The reason ordinarily given in support of this view is that the garnishee, having been restrained by the garnishment from paying his debt, is in no fault for not paying, and hence there is no wrongful detention, and consequently no liability for damages. See Prescott *v.* Parker, 4 Mass., 170; Irwin *v.* The Railroad Co., 43 Penn. St., 488; Adams *v.* Cordis, 8 Pick., 260; Swamscott Mch. Co. *v.* Partridge, 25 Foster, 380.

Another line of authorities holds that, as interest is the mere incident to the debt arising from the defendant's use of the money, the attaching plaintiff is as much entitled to recover the one as the other. In other words, that he is entitled to claim and recover all that the principal defendants could claim and recover from his debtor, the garnishee. Woodruff *v.* Bacon, 35 Conn., 97; see also Templeman *v.* Fauntleroy, 3 Randolph, Va., 447; Smith *v.* German Bank, 60 Miss., 73 '4; Candee *et al. v.* Webster, 9 Ohio St.,
270 452. We are inclined to adopt the latter view of the garnishee's liability rather than the former. We can see no sufficient reason for holding that a garnishee who continues to hold and use the money in his hands after it is due and payable should not be chargeable with interest thereon, notwithstanding he is prevented by the attachment from paying it over to the principal defendant. If he wishes to avoid his liability to pay interest, he can set the fund apart or so deposit it that it will draw interest, or, being a mere stakeholder, he can pay it into the registry of the court, where interest will accrue for the benefit of the party or parties finally held to be entitled thereto. Indeed, one of the presumptions upon which the first class of decisions above referred to seem to rest is that the garnishee keeps the money by him, set apart for the payment of the claim of the attaching creditor. Moreover, the injustice which would result in the present case, both to the principal defendants and also to the attaching plaintiff, by exonerating the garnishee from the payment of interest is a strong argument in favor of the position we have taken. The situation is this: The plaintiff has recovered a final judgment against the principal defendant in the sum of $—. The disclosure of said trustee shows that the sum of $11,938.39, belonging to the principal defendants, is in his hands. Now, suppose it to be charged with only this latter amount as garnishee. The result is that upon payment of said sum its entire indebtedness to the principal defendants is discharged, notwith-
271 standing the fact that it has had the use and benefit of said large sum in its business for upwards of five years. The principal defendants get no benefit from the use of said money by their debtor, the garnishee, by way of a reduction of their indebtedness to the plaintiff, on the one hand, and the plaintiff gets no benefit of said use by way of the satisfaction of his judgment against the principal defendants, on the other. In short, the result would be that the garnishee will have had the use and benefit of said large sum of money for the length of time aforesaid without being liable to anybody therefor. If it be argued that the said Lippitt Woolen Company has been necessarily subjected to trouble and expense,

as it apparently has, in the employment of counsel to properly protect its rights in the premises and in answering the numerous interrogatories propounded in behalf of the plaintiffs, and for that reason it ought not to be compelled to pay for the use of the money in its hands, it is sufficient to reply that it is within the power of the court to allow it such costs and charges as are reasonable in the case, under the provisions of the judiciary act, cap. 34, § 29.

We will now consider the grounds upon which the plaintiff asks for a new trial, and, first, with regard to the refusal of the court to charge the Riverside & Oswego mills and the Wanskuck Company as garnishees. The facts upon which the common pleas
272 division refused to charge these garnishees are as follows:

1. The disclosure of the Riverside & Oswego mills shows a very complicated state of affairs existing between it and the principal defendants, so that the balance due from it to them is very difficult, if not, indeed, impossible, to determine in a proceeding of this sort. It also shows that at the time of the service of the plaintiff's writ upon it all of the property of said principal defendants in its hands and possession had already been attached in suits brought against said principal defendants by the Industrial Trust Company and the Hollis Dressed Meat and Wool Company, the aggregate amounts claimed in which suits exceeded the amount of the defendants' property in the hands and possession of said Riverside & Oswego mills.

2. The Wanskuck Company's disclosure shows that it had in its hands and possession at the time of the service of the plaintiff's writ upon it $28,823.80, due to the principal defendants; that a part thereof, viz., $6,808.23, was the price of eighty-two bags of wool bought by it of said principal defendants July 26, 1889, under the supposition that said bags of wool were the property of said principal defendants; but that after the purchase of said wool the Massachusetts Loan & Trust Company of Boston notified it that said wool was its property and not the property of said defendants, and that said defendants had no right or authority to sell
273 the same, and that said Massachusetts Loan & Trust Company would look to said Wanskuck Company for the purchase price thereof. It also appears that said Massachusetts Loan & Trust Company now has a suit in trover pending in said common pleas division against said Wanskuck Company for the value of said eighty-two bags of wool.

3. Said Wanskuck Company's disclosure also shows that at the time of the service of the plaintiff's writ upon it all the property of said principal defendants in the hands and possession of said Wanskuck Company had already been attached in suits brought against said principal defendants by the Hollis Dressed Meat and Wool Co., the Industrial Trust Company, and the Massachusetts Loan & Trust Company, which suits are still pending, the aggregate amounts claimed in the same exceeding the amount of the defendants' property in said Wanskuck Company's hands and possession.

In view of these disclosures, the common pleas division held that

it could not enter a charging order against the Riverside & Oswego mills and the Wanskuck Company, for the reason that, until it shall be ascertained by the disposition of the pending suits wherein said garnishees have been previously served with trustee process, it is impossible to determine whether either of said garnishees are chargeable, and, if chargeable, to what extent.

We think this ruling was correct; for, while the statute clearly recognizes the possibility and the right of successive attach-
274 ments of the same property (judiciary act, cap. 33, § 32, and cap. 34, § 1) and the right of the plaintiff to share therein after judgment in the order of his attachment, as contended by plaintiff's counsel, yet we do not see how the court could enter a charging order in this case until the disposition of said prior suits, for the reason that the whole fund in the hands of said garnishees may be absorbed in the payment of the judgments which may be obtained in the prior actions; and when the question as to whether a garnishee should be charged is involved in litigation in this manner, with the result necessarily problematical and in doubt, the court will not enter a charging order. Moreover, said statute (judiciary act, cap. 34, § 18) provides that the court in charging a garnishee must determine the extent to which he is chargeable, and also that the execution which issues upon the judgment shall have the amount for which he is charged inserted therein. Judiciary act, cap. 36, § 20. And until the amount due upon said prior attachments shall have been determined, it is impossible to say whether any amount will remain to be applied under this attachment. The proper course for the plaintiff to have taken in these circumstances was to ask for a continuance of the case until said prior suits were disposed of. Cutter *v.* Perkins, 47 Me., 557; Prentiss *v.* Danaher *et al.*, 20 Wis., 328; Brickley *v.* Davis, 9 Bradw., 362; Drake on Attachm., 6 ed., § 630. Indeed, the common pleas division repeat-
edly suggested the difficulty aforesaid and offered to hold the
275 case until the determination of said prior suits, but the plaintiff insisted upon an immediate determination by the court of the liability of said garnishees. He has no occasion, therefore, to complain of the situation in which he is placed by its refusal to charge said garnishees.

The next question in point of importance which is raised by the plaintiff's petition for a new trial is whether the assignees of the Riverside & Oswego mills are chargeable as garnishees. We are clearly of the opinion that they are not, and that the common pleas division was right in discharging them. In order to charge a garnishee it is necessary (1) that he shall have personal property in his possession belonging to the defendant capable of being seized and sold on execution, or (2) that he be liable *ex contractu* to the defendant, whereby the latter has at the time of the garnishment a legal cause of action, present or future, against him. In other words, in order to a recovery against a garnishee it must be shown affirmatively, either by his answer or by evidence *aliunde*, that he has property of the defendant in his possession of a description which will authorize his being charged, or that he is indebted to the de-

fendant. Drake on Attachm., § 461; Smith *v.* Millatt, 11 R. I., 535; Ins. Co. *v.* Weeks, 7 Mass., 438, '9; Field *v.* Crawford, 6 Gray, 116. These garnishees at the time of said service upon them had no personal property in their possession belonging to the principal defendants capable of being seized and sold on execution, nor had the principal defendants any legal cause of action against said garnishees. The trusts of the assign-
276 ment, which they had assumed, were still in process of administration and no dividend had been declared, and even if as *cestuis que trustent*, entitled to participate in the benefits of the assigned estate in the hands of the assignees, the principal defendants could have compelled in equity the execution of the trust and also an accounting, yet this merely equitable right was not attachable by trustee process. See Perry & Barnard *v.* Thornton, 7 R. I., 15; Clarke *v.* Farnum *et al.*, 7 R. I., 174; Waldron *v.* Wilcox, 13 R. I., 520; Bank *v.* Bullock, 120 Mass., 86; Nims *v.* Ford, 159 Mass., 575; Hoyt *v.* Smith, 13 Vt., 129; Hassie *v.* Congregation, 35 Col., 378; Drake on Attachm., §§ 457 & 511. Again, the debt for which an attachment in trustee process may issue must possess an actual character and not be merely possible or probable even, depending on a contingency which may never happen. In the case at bar there was no debt owing from the assignees to the principal defendants at the time of the garnishment, and whether there ever would be depended upon several contingencies. The expenses attending the execution of the assignment, which were first to be paid, might exhaust the property; so might the payment of the preferred claims of the employees; and the mere fact that long subsequent to the service of said writ on the assignees, it turned out that said estate was sufficient to pay a dividend, and that a dividend of 62½ per cent. was declared by the assignees, makes no difference; for, even admitting that an action at law will lie against them for the
277 amount of a dividend after it is duly declared, and also that they would be liable to trustee process in such circumstances, yet at the time of the service of the writ in this case there was no dividend, and hence there was no debt.

In support of its contention that said assignees were properly chargeable as garnishees, counsel for the plaintiff commends to our attention the case of Irvin *v.* McKechine, recently decided by the supreme court of Minnesota, in which the receivers of a railroad, although officers of the court, are held liable to the process. An examination of that case, however, shows that under the statute of that State styled "the removal act," passed March 3, 1887, receivers are subject to suit in respect to any transaction of theirs in operating the road placed under their control by the court; but, while admitting that this was so, the counsel for the garnishees in that case took the point that the money sought to be reached was *in custodia legis*, and hence not subject to garnishment. The court said: "No one will question the correctness of the proposition that property in the hands of receivers appointed by the court is *in custodia legis*, and not subject to levy or garnishment. This doctrine receives additional force in this case from the rule

of judicial comity between State and Federal courts, by which each will refuse to interfere with property in the custody of the other—a rule which we are always solicitous to observe; but in this case it will — noticed that what is sought to be reached by garnishment is the property, not of the railway company,
278 but of the defendant, viz., a debt due him from the receivers. Moreover, while garnishment of a debt is often called a mode of attachment, yet it does not effect a specific lien on any property of the garnishees, such as is acquired by the actual seizure of property. The effect of the judgment is merely to determine the existence and amount of the debt, and to substitute the plaintiff for the defendant as the person to whom it is payable. The judgment against the receivers would not be against them personally, but against them officially. No executory process could be issued on it, for that would interfere with the control of the property in the custody of the Federal court. The manner in which the judgment so rendered shall be paid must be under the exclusive control of that court. It can only be satisfied as other demands may be satisfied, viz., by an application to the court in which the receivership proceedings are pending for an order directing its payment in the due order of the settlement of the affairs of the insolvent company by that court. Under the 'removal act' the defendant himself could have sued the receivers and recovered judgment, and we are unable to see why the plaintiff may not, through garnishee proceedings, recover judgment against them for the same claim, or why a judgment in his favor interferes with property in the custody of the Federal court any more than would a judgment in favor of the defendant for the same claim. We understand that the order of the court appointing these receivers is even broader than the
279 statute, and authorizes suit to be brought in any court of competent jurisdiction on claims against the company which accrued before the receivership, as well as those subsequently incurred by the receivers. We only refer to this as showing that the Federal court does not consider such suits as at all interfering with jurisdiction over the receivership or with the property in its custody. In view of the fact that the receivers of railway companies, as ancillary to winding up the insolvent estate for the benefit of creditors, are authorized to operate the road in lieu of the directors—sometimes for years—any other rule would work great injury, and would often leave the creditors of the employees of the receivers remediless." This case, therefore, as we view it, is clearly against the position taken by the plaintiff's counsel instead of being an authority in support of it.

But it is urged that the word "trustee" in our statute relating to persons who may be garnisheed is broad enough to include one holding property in trust for the benefit of another, and particularly for the reason that the statute in which the phrase "the attorney, agent, factor, trustee, or debtor" appears was in force as early as 1774, when and for a long time afterwards our courts had no chancery jurisdiction over private voluntary trusts, and the creditor had no other means of reaching his debtor's property held

under it than that by this process. It is true that the word "trustee," taken by itself, is broad enough to include, and does include, an assignee, for an assignee is the trustee both for
280 the creditors of the assignor and also for the assignor himself. Said word must not be taken out of its setting, however, and simply its abstract or technical meaning determined; but it must be considered in its collocation and also with reference to the process of garnishment provided for by our statutes relating to that subject; and (1) it may be observed that the proceeding itself is denominated "trustee process" in the statutes. This is the term generally employed in the N. E. States to designate the proceeding. See cap. 34, § 24, judiciary act. In some States it is called "factorizing." In the one case the party in possession is called the "trustee;" in the other the "factor;" but, after all, it is but another mode of effecting the same general purpose. (2.) The form of writ prescribed by our statute commands the attachment of the personal estate of the defendant in the hands or possession of —— —— as "trustee" of the defendant. It is the "trustee" who is to make the disclosure provided for (cap. 34, § 10, judiciary act), and it is the "trustee" who is authorized to satisfy the judgment against the defendant in all cases. Cap. 34, § 15, judiciary act. It is the "trustee" who, in case the property in his hands does not consist of money but of specific articles, is authorized, after judgment against the principal defendant, to surrender such articles to the officer charged with the service of the execution. Cap. 34, § 16, judiciary act. In short, the word "trustee," as used in the various
281 provisions of the statutes relating to trustee process, manifestly denotes the debtor or agent of the principal defendant—*i. e.*, the person against whom an action *ex contractu* at law only might be maintained in favor of the principal defendant—and is not used in its technical sense. (3.) It was evidently never intended that the trustee process provided for in our statutes should be an equitable proceeding, but strictly a proceeding at law. See Raymond *v.* Tinware Co., 14 R. I., 310. As pertinently stated by the plaintiff's counsel himself in his brief, "Trustee process is statutory, and the rights legal rights." If the General Assembly had intended that assignees in insolvency, or even voluntary assignees, should be liable to trustee process, it is reasonable to suppose that the necessary legal machinery for bringing in all the parties in interest, the taking of an account, &c., would have been provided. The farthest our statutes have gone in the direction of making trustee process an equitable proceeding is by letting in adverse claimants to the fund in dispute (Pub. Laws R. I., cap. 433), and thereby to some extent making it answer the purpose of a bill of interpleader. Prov. Inst. for Savings *v.* Barr, 17 R. I., 133; Hanaford *v.* Hawkins, Index N. N., 60; Jenness *v.* Wharff, 32 Atl. Rep., 908. Nor does the fact suggested by plaintiff's counsel, that at the time when our statute relating to trustee process was first enacted the court had no chancery jurisdiction, enlarge the scope of said act, for it does not follow that because the law fails to pro-

vide a remedy in a given case some other remedy may
282 be employed. See Godding *v.* Pierce, 13 R. I., 532. We may also add that, notwithstanding the great length of time that said word "trustee" has been used in our statutes relating to trustee process, no case has ever arisen, so far as we are aware, in which an assignee has been held chargeable as trustee thereunder, at least until after a dividend has been declared, nor has it ever been considered at the bar that he could be so held. See Conway *v.* Armington, adm., 11 R. I., 116. In Perry & Barnard *v.* Thornton, 7 R. I., 15, in which it was attempted to reach an annuity in the hands of the guardian by trustee process, Ames, C. J., said: "It is very plain that he was not her debtor for her annuity nor, in the sense of the statute, her trustee of the rents and profits of the estate of his wards."

Again, the plaintiff asks for a new trial because the common pleas division overruled his motion to reopen the case and summon in the prior attaching creditors as parties thereto. The object of this motion, as stated therein, was "that they" (said prior attaching creditors) "and each of them may show to this court and that the court may examine and determine the validity and amount of such their respective alleged prior attachments and pledge, the said plaintiff denying that said parties or either of them now have any valid claim upon or to either of said attached fund or any property or any part thereof." This was clearly an attempt to force the prior attaching plaintiffs to try their cases in the bowels of the one now before us. We do not think this can be done. The prior
283 attaching creditors are already in court in the cases before referred to and clearly have the right as suitors to try their own cases in their own way. If they should be summoned into this case, there would then be two suits pending to determine the validity of each of their claims against the defendants, and endless confucion and difficulty would arise in finally settling the relative rights of the parties in interest, if indeed it were possible to settle said rights in this way. In short, to have granted the plaintiff's motion would have been in effect to allow him to intervene in said prior suits, which this court has already decided cannot be done. See Cross, petitioner, 17 R. I., 568. And, as said by the court in that case, "The orderly way in law is for each one to pursue his own rights in his own action, and if in so doing another seeks to circumvent him by fraud the existing remedies are ample." This statement also applies with equal force to the trover suit of The Massachusetts Loan & Trust Company *v.* The Wanskuck Company, in which it was sought to recover damages for the conversion of a part of the property which the present plaintiff claims to hold under his attachment. The case of Hanaford *v.* Hawkins, index N N, 58, upon which the plaintiff's counsel mainly relied in support of the motion now under consideration, disclosed a very different state of facts from that which exists in this case. There it simply appeared from the disclosure of the garnishee that he had received a letter from one John A. Hawkins prior to the garnishment, stating that he had purchased the judgment,
284 the amount of which the garnishee had collected and had in his possession, but that the garnishee knew nothing of the

truth of the alleged fact of an assignment of said judgment. It did not appear, however, in that case that any suit was pending in favor of such alleged claimant, or that he had taken any steps to recover said fund except the giving of said notice to the garnishee; nor did it appear, even, that said alleged claimant had had any notice of the garnishment, so that he might appear if he saw fit and be heard on the question of title to said fund. In these circumstances we held that the alleged claimant should be summoned in and made a party to the suit before determining as to the liability of the garnishee, in order that both his (said claimant's) rights as well as those of the attaching plaintiff in said fund might be fully protected.

Still another ground upon which the plaintiff asks for a new trial is the admission of certain supplemental affidavits or disclosures by the garnishees. We think it was clearly within the discretion of the court to allow such supplemental affidavits to be filed. Winsted Bank *v.* Adams, 97 Mass., 110; Collins *v.* Smith, 12 Gray, 433–'5; Hovey *v.* Crane, 12 Pick., 166; Soule *v.* Ice Co., 85 Me., 166. The propriety of allowing a garnishee to amend his affidavit or disclosure when requested by him is generally recognized. "There may be cases," as said in Drake on Attachm., § 650, "where the garnishee discovers new facts or finds that he has made an imperfect
285 or erroneous statement, and there seems to be nothing in principle to prevent him before final judgment from making a more complete, perfect, and correct answer, being responsible, as in all other cases, for its truth. The only objection which could arise is that a garnishee might be induced, by new suggestions and new views, to put in an answer varying from his first answer and not true in itself; but when it is considered that by any mode of administering the law the garnishee might employ his own counsel and make such answer as he will there seems to be no more danger of falsification in one case than in the other." If, as suggested by the plaintiff's counsel, it appears by the record itself in the case at bar to be perfectly evident that all of said supplemental affidavits were made at the instance of and in collusion with the claimant King, that certainly cannot prejudice the plaintiff's rights, the rule being that evasive answers by the garnishee will be treated as a nullity. Scales *v.* Swan, 9 Porter, 163; Parker *v.* Page, 38 Cal., 522. Or, if not so, they will be construed most strongly against him. Crain *v.* Gould, 46 Ill., 293; Keel *v.* Ogden, 5 Monroe, 362. And any equivocation will subject the entire answer to suspicion.

With regard to the point taken by the plaintiff's counsel, that the overruling by the common pleas division of his motion to strike out certain portions of the affidavits of the garnishees was error, we have to say that we do not think it should be sustained. It was a motion which addressed itself to the sound discretion of the court, and hence
286 unless it is shown that the overruling thereof was clearly an abuse of such discretion, it is not a proper subject of review. An examination of the affidavits in question does not satisfy us that said ruling was improper. For, while some of the matter objected to is manifestly irrelevant and impertinent, and, as remarked by Rogers, J., in his opinion, "as such when offered by the claim-

ants as mere testimony was not admitted, but when presented and sworn to by the garnishees in their affidavits was allowed to be filed, such permission was granted because, in the opinion of the court, the rights and liabilities of garnishees and claimants are very different. A garnishee is involuntarily summoned in. If he fails to answer fully, he does so at the peril of being obliged to pay twice. If he makes a false answer or affidavit, he is liable to an action for damages which may result to the plaintiff from such answer or affidavit. The sworn answer of the garnishee shall be considered true in deciding how far said garnishee is liable, though either party to the suit or any claimant of the estate so attached may allege and prove any facts not stated or denied by said garnishee or trustee that may be material in so deciding. While, in the case of an ordinary witness, testimony deemed by the court to be irrelevant will not be admitted to take up the time of the court, yet in the case of garnishees' affidavits, as the matter disclosed is deemed by the garnishee necessary for his protection, it would seem to be the better course to let them stand and upon consideration
287 of the case to reject irrelevant parts than to suppress and strike out such parts, as in the former case the appellate division, if the case should be taken up to it, would have the full and undisturbed garnishees' disclosures before it, and could also reject what it deemed irrelevant."

As to the contention of the plaintiff that he should have been permitted to offer evidence in support of his allegations filed February 27, 1894, we are of the opinion that it cannot be sustained. Said allegations, or rather allegations and interrogatories combined, for such they, in fact, are, related (1) to the acts of the prior attaching plaintiffs in proving the debts on which said prior actions were based, in the insolvency proceedings in Massachusetts, and also in receiving dividends thereon; (2) to the discharge of said defendants in said insolvency proceedings; (3) to the fact that the Riverside & Oswego mills or any of its directors or officers never made and filed in the city clerk's office of the city of Providence any return, under the statute in such case provided, to exempt its stockholders and directors from personal liability for its debts; (4) to the question as to how said trust company originally came to the possession of the notes, drafts, and obligations of the defendants referred to in the affidavit of the Wanskuck Company, and for and to whom the same and their proceeds were originally discounted and paid, and what, if any, collaterals were held by said trust company for the same, and the disposition thereof, and what payments said trust company has received upon the
288 said notes and obligations, either from such collateral or otherwise, and what disposition it has made of the said notes, drafts, and obligations, and which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same; (5) to the question as to what and for what was the indebtedness of the defendants to said trust company sought to be enforced in said attachment suit against the defendants referred to in the affidavits of said Wanskuck Company, and what collat-

erals were held by said trust company for the same, and as to what disposition has been made of said collaterals, and what payments said trust company has received upon said indebtedness, either from such collaterals or otherwise, and what disposition of said indebtedness or the evidences thereof has been made by said trust company, and what or which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same; and (6) as to what was the indebtedness of said defendants to said Hollis Dressed Meat and Wool Co. sought to be enforced in its attachment suit aforesaid, and what, if any, collaterals were held by said Hollis Dressed Meat and Wool Co. for the same, and the disposition which has been made of said collaterals, and the payments which have been received upon said indebtedness, either from such collaterals or otherwise, and what disposition of said indebtedness or the evidences thereof has been made by said Hollis Co., and what
289 or which of the same it now holds, and what is the present condition of and who now holds or is really entitled to the same. It will thus be seen at a glance that to have allowed the evidence offered would have been, in effect, to try the cases of the said prior attaching creditors in the bowels of the one now before us, besides converting the whole proceeding into a bill in equity, neither of which, as we have already seen, can be done.

Finally, we are therefore of the opinion that neither the plaintiff's petition for a new trial nor that of said Lippitt Woolen Company and Theophilus King, adverse claimant, should be granted. Said petitions are therefore denied and dismissed and the case remitted to the common pleas division for further proceedings.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

CLERK'S OFFICE, *October* 1, *A. D.* 1897.

Supreme Court, Appellate Division.

JOHN A. CROSS
v.
BROWN, STEESE & CLARKE. } No. 2031. Ex.

A true copy of the original opinion in the above-entitled case filed October 28, A. D. 1895, and now on file.

Attest:
(S'g'd) BERTRAM S. BLAISDELL, *Clerk.*

[Endorsed:] Exc., 2031.

290 (*Record of Case.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division, September Session, A. D. 1895.

JOHN A. CROSS
vs.
BROWN, STEESE & CLARKE. } No. 4867.

Be it remembered that at the December term, A. D. 1889, of the court of common pleas within and for the county of Providence John A. Cross, of the city and county of Providence, complained of Gideon T. Brown, of Alston; Edward Steese and Amasa Clarke, of Brookline, all in the State of Massachusetts, now or late copartners, doing business under the firm name of Brown, Steese & Clarke, whose personal property and estate has been attached, and who have been summoned in an action of the case, for that the said defendant, by and under the name, style, and firm of Brown, Steese and Clarke, at Boston, in the State of Massachusetts, to wit, the ninth day of April, A. D. 1889, by their promissory note in writing of that date by them signed, for value received, promised to pay to the order of the International Trust Company at its place of business, in said Boston, twenty thousand dollars on demand, with interest at the rate of 5½ per cent. per annum, and thereafterwards, to wit, on the same day, the said International Trust Company indorsed and delivered said note to the plaintiff; and the plaintiff avers that, though often requested, the said defendants have not paid said note; and also for that the said defendants, by and under the name, style, and firm of Brown, Steese & Clarke, at Boston, in the State of Massachusetts, to wit, the seventh day of May, A. D. 1889, by their
291 promissory note in writing of that date by them signed, for value received, promised to pay to the order of the International Trust Company, at its place of business in said Boston, twenty thousand dollars on demand, with interest at the rate of 5 per cent. per annum; and thereafterwards, to wit, on the same day, the said International Trust Company indorsed and delivered said note to the plaintiff, and the plaintiff avers that, though often requested, the said defendants have not paid said notes. The plaintiff also filed the usual common money counts; averred that, though requested, said defendants had not paid said sums or any part thereof, and laid damages at $70,000.00. Said case was duly entered, and thereupon said defendants made answer of the general issue that "they never promised," etc., and, issue being thereupon joined, said case was set down for trial to the March term, A. D. 1890, of said court of common pleas, when said case, being called for trial, was argued by counsel and committed to a jury duly impanelled and sworn to try the issue joined, who found that the defendants did promise in manner and form as the plaintiff has in his declaration thereof complained against them and assess damages for the plaintiff in the sum

of $41,534.27; and thereupon judgment was stayed and said case continued from term to term unto the June term, A. D. 1893, of said court of common pleas, and then, under the provisions of the judiciary act, to the September session, A. D. 1893, of this common pleas division of the supreme court within and for said county of Providence, and then from session to session unto this present September session, A. D. 1895, of said division, and from time to time from said March term, A. D. 1890, of said court of common pleas to this present session of this said common pleas division, said case was heard by the court, Rogers, J., upon
292 the respective rights and claims of the Lippitt Woolen Company, the Wanskuck Company, the Atlantic mills, and the Riverside & Oswego mills, corporations duly incorporated, all of said city and county of Providence, and of Charles D. Owen, James B. Case, and Chester A. Braman, assignees of said Riverside & Oswego mills, all served with process as trustees of said defendants; and upon the petitions of Theophilus King, of Quincy; George S. Bullens, of Newton, and Warren Sawyer, of Wellesley, all in the Commonwealth of Massachusetts, trustees, to intervene as adverse claimants to the personal estate of said defendants attached in the hands of certain of said garnishees; and upon the original and supplemental affidavits of certain of said garnishees and upon various interrogatories to certain of said garnishees, and also upon the motion of said plaintiff to charge said garnishees except said Atlantic mills, the assignees of said garnishee, the Riverside & Oswego mills, being discharged at the June term, A. D. 1893, of said court of common pleas; and at the September session, A. D. 1893, of this said division decision was filed by the court, Rogers, J., as follows: That plaintiff's motion to suppress and strike out certain portions of the garnishees' affidavits be denied; that the plaintiff's motion, filed June 12th, A. D. 1894, to reopen the case for the purpose of making new parties be denied; that plaintiff have judgment on his verdict; that the Lippitt Woolen Company is chargeable in this action, as trustee of the defendants, in the sum of $11,938.39, together with interest thereon, at the rate of 6 per cent. per annum, from September 12th, A. D. 1889, and that the Wanskuck Company and the Riverside & Oswego mills are not chargeable in this action, as trustee of the defendants; and said case was duly certified to the appellate division of this said supreme court upon the petitions for a new trial preferred by said plaintiff, said Lippitt Woolen Company, garnishee, and said Theophilus King, adverse claimant; and
293 now, at this said present session of this said common pleas division, said petitions for a new trial are all dismissed by said appellate division and said case remitted to this said common pleas division for further proceedings, and, by agreement, judgment is entered by the court, Douglas, J., to wit, upon the 14th day of December, A. D. 1895, upon said verdict for said plaintiff for the sum of $55,822.06 debt and his costs of suit, taxed at $189.70, of which said sums said Lippitt Woolen Company, garnishee, is charged, as

trustee of the said defendants, to the extent of $16,421.26, and all other trustees are not charged. Ex. Gr.

Attest:

(S'g'd) GEO. E. WEBSTER, *Clerk.*

294 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, Common Pleas Division.

CLERK'S OFFICE.

JOHN A. CROSS *vs.* BROWN, STEESE & CLARKE. } No. 4867.

I, George E. Webster, clerk of said common pleas division of the supreme court within and for said county of Providence and custodian of the records of the late court of common pleas within and for said county of Providence, do hereby certify the aforegoing to be a true copy of the record and proceedings in the above-entitled cause now remaining in said division of the supreme court, together with a true copy of such documents and exhibits now on file concerning the same as have been designated by the attorneys of said Lippitt Wool Company and said Theophilus King in said cause, in which said cause judgment was rendered at the September session, A. D. 1895, of this said division.

Seal Supreme Court, Common Pleas Division, State of Rhode Island and Providence Plantations, Providence County.

Witness my hand and the seal of said division, at the city of Providence, in said county of Providence and State aforesaid, this fifteenth day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

GEO. E. WEBSTER, *Clerk.*

295 UNITED STATES OF AMERICA, *ss:*

[Seal of Circuit Court, Rhode Island.]

The President of the United States to the honorable the judges of the supreme court of the State of Rhode Island, holden at Providence, within and for the county of Providence, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the State of Rhode Island in which a decision could be had in the suit between John A. Cross, plaintiff, and Brown, Steese & Clarke, defendants, Lippitt Woolen Company, alleged trustee, and Theophilus King, adverse claimant, wherein was drawn in question the validity

of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Theophilus King, adverse claimant, and Lippitt Woolen Company, alleged trustee, as by their complaints appear, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the third Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

WILLIAM P. CROSS,
Clerk of the Circuit Court of the United States,
District of Rhode Island.

Allowed by—

CHARLES MATTESON,
Chief Justice of the Supreme Court
of the State of Rhode Island, &c.

296 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *ss.:*

And now here the judges of the supreme court of said State, presiding at the common pleas division of said supreme court within and for said county of Providence, make return of this writ by annexing hereto and sending herewith, under the seal of the said division of said court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things designated as concerning the same, to the Supreme Court of the United States, as within commanded.

Seal Supreme Court, Common Pleas Division, State of Rhode Island and Providence Plantations, Providence County.

In testimony whereof I, George E. Webster, clerk of said common pleas division of the supreme court within and for said county, have hereto set my hand and the seal of said court this fifteenth day of October, A. D. 1897.

GEO. E. WEBSTER, *Clerk.*

[Endorsed:] Writ of error. Theophilus King *et als.*, pl'ffs in error, *vs.* John A. Cross *et als.*, def'ts in error. Supreme court, com. pleas div., Sep. 18, 1897. Geo. E. Webster, clerk.

297 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To John A. Cross, Gideon P. Brown, Edward Steese, and Amasa Clarke, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court, common pleas division, of the State of Rhode Island, wherein Theophilus King and The Lippitt Woolen Co. are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles Matteson, chief justice of the supreme court of Rhode Island, this 18th day of September, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES MATTESON,
Chief Justice Supreme Court of Rhode Island, &c.

Due and sufficient service of the within citation is hereby acknowledged this the 15th day of October, 1897.

GIDEON P. BROWN,
EDWARD STEESE,
AMASA CLARKE,
By their attorney, WALTER H. BARNEY.

298 DISTRICT OF RHODE ISLAND, *sc:*

In Providence, this 15th day of October, A. D. 1897, I have made service of the within citation on the within-named John A. Cross, by reading the same to him and by leaving a true and attested copy of the same in his hands & possession.

JAS. S. McCABE,
U. S. Marshal.

Service	2.00
Copy	.30
Trans.	.06
	$2.36

299 [Endorsed:] Theophilus King *et als.*, pl'ffs in error, *vs.* John A. Cross *et als.*, def'ts in error. Citation.

Endorsed on cover: Case No. 16,703. Rhode Island supreme court. Term No., 186. Theophilus King, adverse claimant, and The Lippitt Woolen Company, alleged trustee, plaintiffs in error, *vs.* John A. Cross, Gideon P. Brown, Edward Steese, and Amasa Clarke. Filed October 21st, 1897.